# TEXAS REGISTER

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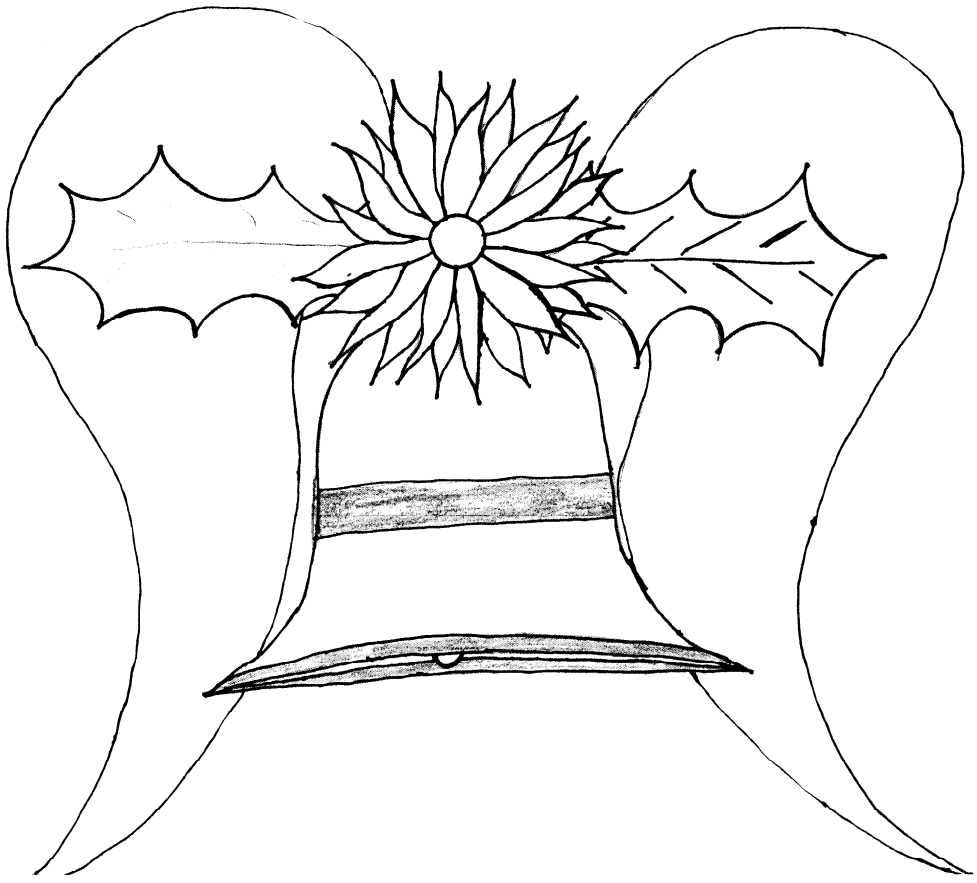

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but 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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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.texas.gov

# In This Issue

**Texas Department of Transportation**

# THE GOVERNOR

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

## Appointments

**Appointments for November 13, 2019**

Appointed to the Board for Lease of Texas Parks and Wildlife Land, for a term to expire February 1, 2021, Clifton E. "Cliff" Bickerstaff of Amarillo, Texas (Mr. Bickerstaff is being reappointed).

**Appointments for November 14, 2019**

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2025, Molly M. Francis of Dallas, Texas (replacing John "Eric" Gambrell of Dallas, whose term expired).

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2025, Faith S. Johnson of Cedar Hill, Texas (replacing Robert "Terrell" McCombs of San Antonio, whose term expired).

Appointed to the Texas Board of Criminal Justice, for a term to expire February 1, 2025, Sichan Siv of San Antonio, Texas (replacing Thomas P. "Tom" Wingate of McAllen, whose term expired).

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2025, Stephen W. "Steve" Ponder, M.D. of Belton, Texas (replacing Curtis Triplitt, Pharm.D. of San Antonio, whose term expired).

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2025, Jason M. Ryan of Houston, Texas (Mr. Ryan is being reappointed).

Appointed to the Texas Diabetes Council, for a term to expire February 1, 2025, Christine A. Wicke, Pharm.D. of McKinney, Texas (replacing Carley Gomez-Meade, D.O. of Austin, whose term expired).

**Appointments for November 15, 2019**

Appointed as presiding officer to the Chronic Kidney Disease Task Force, pursuant to HB 1225, 86th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Francisco G. Cigarroa, M.D. of San Antonio, Texas.

Appointed to the Gulf States Marine Fisheries Commission, for a term to expire March 17, 2020, Douglass W. "Doug" Boyd of Boerne, Texas (replacing Troy B. Williamson, II of Portland, who resigned).

Appointed to the State Independent Living Council, for a term to expire October 24, 2022, Thomas M. "Mike" Bates of Odessa, Texas (Mr. Bates is being reappointed).

Appointed to the State Independent Living Council, for a term to expire October 24, 2022, Keisha Rowe Nunn of Austin, Texas (Ms. Nunn is being reappointed).

Appointed to the State Independent Living Council, for a term to expire October 24, 2022, Colton J. Read of New Braunfels, Texas (Mr. Read is being reappointed).

**Appointments for November 18, 2019**

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2020, Craig R. Bessent of Abilene, Texas (pursuant to HB 4342, 86th Legislature, Regular Session).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2020, Andrew B. Kim of New Braunfels, Texas (Mr. Kim is being reappointed).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2020, Kerri W. Ranney of Georgetown, Texas (pursuant to HB 4342, 86th Legislature, Regular Session).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2020, Alan S. Trevino of Burnet, Texas (replacing Dewey M. "Mike" Cox of Driftwood, who resigned).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2021, Terry Deaver of Silsbee, Texas (replacing Robert L. Long, III, Ed.D. of Tomball, whose term expired).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2021, Edwin S. Flores, Ph.D. of Dallas, Texas (replacing Jason M. Burdine of Richmond, whose term expired).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2021, Daniel F. "Dan" Gilliam of Victoria, Texas (Judge Gilliam is being reappointed).

Appointed to the Texas School Safety Center Board, for a term to expire February 1, 2021, Jill M. Tate of Colleyville, Texas (Ms. Tate is being reappointed).

Appointed as the Director of the Regulatory Compliance Division, Office of the Governor, pursuant to SB 1995, 86th Legislature, Regular Session, for a term to expire February 1, 2021, Erin E. Bennett of Austin, Texas.

**Appointments for November 22, 2019**

Appointed to the State Commission on Judicial Conduct, for a term to expire November 19, 2025, Janis A. Holt of Silsbee, Texas (replacing David M. Russell of Dripping Springs, whose term expired).

Appointed to the Texas Farm and Ranch Lands Conservation Council, for a term to expire February 1, 2025, James D. "Jim" Bradbury of Austin, Texas (replacing Thomas R. Kelsey of Houston, whose term expired).

Appointed to the Texas Farm and Ranch Lands Conservation Council, for a term to expire February 1, 2025, Abby L. Frank of Brenham, Texas (replacing John Zacek of Inez, whose term expired).

Greg Abbott, Governor

TRD-201904493

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## Proclamation 41-3698

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, the Honorable Eric Johnson, in taking the Oath of Office as Mayor of the City of Dallas on June 17, 2019, has caused a vacancy to exist in Texas House of Representatives District No. 100, which is wholly contained within Dallas County; and

WHEREAS, a special election to fill the vacancy in House District No. 100 was held on Tuesday, November 5, 2019, and the results of that special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.021 of the Texas Election Code requires that a runoff election be held if no candidate receives the votes necessary to be elected; and

WHEREAS, Section 2.025(d) of the Texas Election Code provides that the runoff election must be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires the special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in Texas State House of Representatives District No. 100 on January 28, 2020, for the purpose of electing a state representative to serve out the unexpired term of the Honorable Eric Johnson.

Early voting by personal appearance shall begin on Tuesday, January 21, 2020, in accordance with Sections 85.001(b) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Dallas County Judge which is the county within which Texas State House of Representatives District No. 100 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said special runoff election may be held to fill the vacancy in Texas State House of Representatives District No. 100 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of November 2019.

Greg Abbott, Governor

TRD-201904495

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Proclamation 41-3699

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, the resignation of the Honorable John Zerwas, and its acceptance, has caused a vacancy to exist in Texas State House of Representatives District No. 28, which is wholly contained within Fort Bend County; and

WHEREAS, a special election to fill the vacancy in House District No. 28 was held on Tuesday, November 5, 2019, and the results of that special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.021 of the Texas Election Code requires that a runoff election be held if no candidate receives the votes necessary to be elected; and

WHEREAS, Section 2.025(d) of the Texas Election Code provides that the runoff election must be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires the special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in Texas State House of Representatives District No. 28 on Tuesday, January 28, 2020, for the purpose of electing a state representative to serve out the unexpired term of the Honorable John Zerwas.

Early voting by personal appearance shall begin on Tuesday, January 21, 2020, in accordance with Sections 85.001(b) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Fort Bend County Judge which is the county within which Texas State House of Representatives District No. 28 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said special runoff election may be held to fill the vacancy in Texas State House of Representatives District No. 28 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of November, 2019.

Greg Abbott, Governor

TRD-201904494

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Proclamation 41-3700

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, the resignation of the Honorable Jessica Farrar, and its acceptance, has caused a vacancy to exist in Texas State House of Representatives District No. 148, which is wholly contained within Harris County; and

WHEREAS, a special election to fill the vacancy in House District No. 148 was held on Tuesday, November 5, 2019, and the results of that special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.021 of the Texas Election Code requires that a runoff election be held if no candidate receives the votes necessary to be elected; and

WHEREAS, Section 2.025(d) of the Texas Election Code provides that the runoff election must be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires the special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in Texas State House of Representatives District No. 148 on Tuesday, January 28, 2020, for the purpose of electing a state representative to serve out the unexpired term of the Honorable Jessica Farrar.

Early voting by personal appearance shall begin on Tuesday, January 21, 2020, in accordance with Sections 85.001(b) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Harris County Judge which is the county within which Texas State House of Representatives District No. 148 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said special runoff election may be held to fill the vacancy in Texas State House of Representatives District No. 148 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of November, 2019.

Greg Abbott, Governor

TRD-201904496

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Proclamation 41-3701

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of November, 2019.

Greg Abbott, Governor

TRD-201904572

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Proclamation 41-3702

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, ten proposed amendments to the Texas Constitution were voted on in the Constitutional Amendment Election held on November 5, 2019; and

WHEREAS, on the 4th day of December, 2019, I, Greg Abbott, Governor of the State of Texas, did certify the tabulation prepared by the Secretary of State; and

WHEREAS, the tabulation and total of the votes cast for and against each proposed amendment established that the voters of the State of Texas adopted the following nine proposed amendments by a majority vote, to wit:

PROPOSITION No. 2, as submitted by Senate Joint Resolution No. 79, providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed $200 million to provide financial assistance for the development of certain projects in economically distressed areas.

PROPOSITION No. 3, as submitted by House Joint Resolution No. 34, authorizing the legislature to provide for a temporary exemption from ad valorem taxation of a portion of the appraised value of certain property damaged by a disaster.

PROPOSITION No. 4, as submitted by House Joint Resolution No. 38, prohibiting the imposition of an individual income tax, including a tax on an individual's share of partnership and unincorporated association income.

PROPOSITION No. 5, as submitted by Senate Joint Resolution No. 24, dedicating the revenue received from the existing state sales and use taxes that are imposed on sporting goods to the Texas Parks and Wildlife Department and the Texas Historical Commission to protect Texas' natural areas, water quality, and history by acquiring, managing, and improving state and local parks and historic sites while not increasing the rate of the state sales and use taxes.

PROPOSITION No. 6, as submitted by House Joint Resolution No. 12, authorizing the legislature to increase by $3 billion the maximum bond amount authorized for the Cancer Prevention and Research Institute of Texas.

PROPOSITION No. 7, as submitted by House Joint Resolution No. 151, allowing increased distributions to the available school fund.

PROPOSITION No. 8, as submitted by House Joint Resolution No. 4, providing for the creation of the flood infrastructure fund to assist in the financing of drainage, flood mitigation, and flood control projects.

PROPOSITION No. 9, as submitted by House Joint Resolution No. 95, authorizing the legislature to exempt from ad valorem taxation precious metal held in a precious metal depository located in this state.

PROPOSITION No. 10, as submitted by Senate Joint Resolution No. 32, allowing the transfer of a law enforcement animal to a qualified caretaker in certain circumstances.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 4th day of December, 2019.

Greg Abbott, Governor

TRD-201904573

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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-0314-KP**

**Requestor:**

The Honorable William James Dixon

Navarro County District Attorney

300 West Third Avenue, Suite 301

Corsicana, Texas 75110

Re: Effective date and applicability of certain court costs and related fees imposed by Senate Bill 346 (RQ-0314-KP)

**Briefs requested by December 19, 2019**

**RQ-0315-KP**

**Requestor:**

The Honorable John T. Hubert

Kleberg and Kenedy Counties District Attorney

Post Office Box 1471

Kingsville, Texas 78364

Re: Applicability of the constitutional resign-to-run provision to a county constable (RQ-0315-KP)

**Briefs requested by December 23, 2019**

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

TRD-201904484
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: November 22, 2019

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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 8. TEXAS JUDICIAL COUNCIL

## CHAPTER 176. METHODS FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE

### 1 TAC §176.1

*Introduction and Purpose*

The Texas Judicial Council (Council) proposes new Chapter 176, regarding Methods for the Improvement of the Administration of Justice, and new §176.1, concerning an admonishment by a court of certain persons ineligible to possess a firearm or ammunition. The purpose of the new rule is to improve due process protections for individuals who are ineligible to possess a firearm or ammunition under Texas law, improve community safety in Texas, and implement recommendations made by Governor Greg Abbott in his *Texas Safety Action Report* (September 12, 2019) to combat gun violence in Texas.

*Fiscal Note*

Jennifer Henry, Chief Financial Officer of the Office of Court Administration (OCA), has determined that for each year of the first five-year period the rule is in effect, there will be no significant fiscal implication for the state or for local governments.

*Public Benefit and Economic Impact*

Maria Elena Ramon, General Counsel of OCA, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be greater clarity and awareness in what is required by law related to ineligibility to possess a firearm or ammunition and guidance to the State's courts regarding best practices. There will be no cost to small businesses, micro-businesses, rural communities, or individuals.

*Local Employment and Government Growth Impact Statement*

Ms. Ramon has also determined that a local employment impact statement for the proposed section is not required because there will be no impact to the local economy for each year of the first five years the rule is in effect. Ms. Ramon has also determined that the proposed section does not: 1) create or eliminate government programs or employee positions; 2) require an increase or decrease in future legislative appropriations or fees paid to the agency; 3) increase or decrease the number of individuals subject to the rule; and 4) positively or adversely affect the state's economy. The proposed section creates a new rule regarding the implementation of current law and the adoption of best practices by the State's courts.

*Comments*

Comments on the proposed rule will be accepted for 30 days following publication of the proposed rule in the *Texas Register.* Comments on the proposal rule may be submitted to Brandon Bellows by email at brandon.bellows@txcourts.gov.

*Statutory Authority*

New Chapter 176 and new rule §176.1 are proposed under the following sections of the Government Code: §71.019, which authorizes the Council to adopt rules expedient for the administration of its functions; §71.033, which directs the Council to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in or improving the administration of justice; and §71.031, which directs the Council to study the organization, rules, procedures and practice, work accomplished, results, and uniformity of the discretionary powers of the state courts and methods for their improvement.

No other statutes, articles, or codes are affected by the proposed rule.

*§176.1. Admonishment by Court of Certain Persons Ineligible to Possess Firearm or Ammunition.*

(a) In this section, "Firearm" has the meaning assigned that term by Penal Code §46.01(3).

(b) When a person, by entry of an order or judgment, becomes by state law ineligible to possess a firearm or ammunition, the trial court must inform that person of the person's ineligibility to possess a firearm or ammunition.

(1) If the person is appearing before the court when the person is or becomes ineligible, the court must:

(A) orally admonish the person, in a manner the person can understand, that the person is ineligible to possess a firearm or ammunition; and

(B) provide the person with a written admonishment informing that person of the person's ineligibility to possess a firearm or ammunition.

(2) If the person is not appearing before the court when the person is or becomes ineligible, the court must:

(A) provide the person with a written admonishment informing that person of the person's ineligibility to possess a firearm or ammunition; and

(B) ensure that the written admonishment is served on the person.

(c) The admonishment must clearly inform a person that possession of a firearm or ammunition could lead to additional charges.

(d) The Office of Court Administration shall publish on its website model admonishment language and a written model admonishment form approved by the Texas Judicial Council for use by a court and for distribution by a court to a person informing that person of the person's ineligibility to possess a firearm or ammunition.

(e) The Office of Court Administration must coordinate with the Court of Criminal Appeals and the judicial training entities to ensure that judges are provided adequate training regarding the admonishments required by this rule and 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.

Filed with the Office of the Secretary of State on December 2, 2019.

TRD-201904528
Maria Elena Ramon
General Counsel
Texas Judicial Council
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-7553

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# PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

## SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to 1 TAC §371.1603, concerning Legal Basis and Scope; and §371.1715, concerning Damages and Penalties.

BACKGROUND AND PURPOSE

The purpose of the amendments is to clarify the factors that the agency will consider when imposing and scaling enforcement actions as required under Texas Government Code §531.102(x), including appropriate mitigating factors, as well as to clarify that the agency assesses penalties in accordance with relevant law, particularly Texas Human Resources Code §32.039.

During its last review of the Texas Health and Human Services Commission-Office of Inspector General (HHSC-OIG), the Sunset Commission recommended that the agency revise its rules to provide direction for determining which sanction to apply to each violation committed by a person subject to agency regulation. After consulting with stakeholders, the proposed amendments to §371.1603 provide that direction while also recognizing that each case must be evaluated on a case-by-case basis. The amendments clarify those factors that the agency applies when determining the seriousness, prevalence of error, harm, or potential harm of a violation, as required by statute. The amendments add examples of mitigating factors that the agency may consider when evaluating a violation and scaling resulting enforcement actions. The amendments also clarify that a person potentially subject to an enforcement action may introduce such mitigating factors in any contested case, as well as during the agency's informal resolution process.

The proposed amendments to §371.1715 clarify that OIG has the authority to impose administrative penalties on behalf of HHSC or other health and human service agencies if such penalties are authorized by law, and that penalties for violations concerning Medicaid and other medical assistance programs will be imposed in accordance with Section 32.039, Texas Human Resources Code, which provides ranges of penalties for specific violations. The amendments also clarify that OIG will, when imposing penalties, apply the factors in accordance with §371.1603.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §371.1603(c) replaces "payment plan" with "installment agreement" and clarifies that an installment agreement may include provision for assessing interest or administrative penalties. The amendment also clarifies that a person may request an installment agreement, but that approval of installment agreements is at the OIG's sole discretion. A person facing interest or administrative penalties due to late or missed payments may present good cause for the OIG to consider before imposing such interest or penalties.

Proposed amendment to §371.1603(f) clarifies that, except as provided in other statute, rule, or regulation, the factors listed in Texas Government Code §531.102(x) and additional factors found in Texas Human Resources Code §32.039 will be considered when determining the appropriate administrative action or sanction. The term "provider" is replaced with "person" in (f)(2), two new factors are added as (f)(4) and (f)(6), and reference to "aggravating" factors is removed in (f)(5) as amended.

Proposed amendment to §371.1603(g) replaces the previous reference to "aggravating factors" with clarification that the factors in (g) may be considered in order to determine the "seriousness, prevalence of error, harm, or potential harm" of a violation as listed in subsection (f). The ten factors listed in subsection (g) are re-numbered and modified to improve clarity.

Proposed amendment to §371.1603(h) clarifies that the person seeking to mitigate the severity of a violation or sanction shall have the burden to present mitigating evidence to the OIG in any contested case. Amended language also clarifies that OIG may consider any mitigating evidence the agency becomes aware of while making a preliminary determination regarding an appropriate administrative action or sanction; however, if the person seeking mitigation wishes the OIG to consider any mitigating evidence after the issuance of a notice from the OIG of the agency's intent to impose a sanction or a preliminary penalty report, then the person shall provide such evidence to the OIG before any scheduled informal resolution meeting or informal review.

Proposed new §371.1603(h)(2)(A) - (D) adds four factors that enumerate the type of remedial measures that may be considered by OIG as mitigating factors in a contested case.

Proposed new §371.1603(i) specifies that OIG may consider any mitigating evidence that the person potentially subject to administrative sanctions has introduced during the contested case process.

Proposed amendment to §371.1715(a) replaces existing language with language from Texas Government Code §531.102(x) regarding OIG authority.

Proposed new §371.1715(b) explains that OIG will follow the process outlined in Texas Human Resources Code §32.039 when assessing administrative penalties or damages for violations related to health care items or services provided under federal law, including under the Medicaid program, and including opportunities for a person subject to potential penalties or damages to have an informal review and an appeal.

Proposed amendment to §371.1715(c) provides detail from Texas Human Resources Code §32.039 regarding the due process procedures that apply to the assessment of administrative penalties or damages. The revision is intended to streamline the rule, and does not change due process rights or processes.

Proposed amendment to §371.1715(d) summarizes the due process provided under Human Resources Code §32.039 to a person who has received a notice of a preliminary penalty report. Such a person may make a written request for an informal review and, following receipt of written notice of the results of an informal review, make a written request for an administrative appeal hearing.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

James Day, Director of Litigation, HHSC-OIG Office of Chief Counsel, has determined that for each year of the first five years the rules are in effect, the public benefit will be to increase transparency by clarifying for Texas Medicaid providers the factors the agency will consider when deciding what sanction, if any, is appropriate for a given violation.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The rule amendments provide stakeholders with greater transparency regarding existing HHSC-OIG processes for determining administrative enforcement actions.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or by email to *IG_Rules_Comments_Inbox@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R044" in the subject line.

## DIVISION 1. GENERAL PROVISIONS

### 1 TAC §371.1603

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102 (a), which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the executive commissioner, in consultation with the office, shall adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; 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 provides

HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e) HHSC with the authority to adopt rules necessary to implement this section; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to more damages and penalties.

The amendments affect Texas Government Code §§531.0055 and 531.102 and implement Human Resources Code, Chapter 32 and Government Code, Chapter 531.

*§371.1603. Legal Basis and Scope.*

(a) The OIG may take administrative enforcement measures against a person or an affiliate of a person based upon an investigation or finding, including an audit finding, in the Medicaid or other HHS programs. Administrative enforcement measures may include:

(1) making referrals for further investigation or action;

(2) taking an administrative action;

(3) imposing a sanction;

(4) assessing damages, penalties, costs related to an administrative appeal, and investigative and administrative costs; or

(5) denying the enrollment of a person for participation in the Medicaid program.

(b) When the OIG receives information regarding a possible program violation or possible fraud, abuse, overpayment, or waste, the OIG conducts an investigation pursuant to Subchapter F of this chapter (relating to Investigations). If, at any point during its investigation, the OIG determines that an overpayment resulted without wrongdoing, the OIG may refer the matter for routine payment correction by the agency's fiscal agent or an operating agency or may offer a payment plan.

(c) At the OIG's sole discretion, overpayments may be collected in a lump sum or through installments. A person may request to pay through installments, but the OIG has sole discretion whether to grant the request. The OIG determines a reasonable length of time for an installment agreement [~~a payment plan~~] based on the circumstances of each individual case. Installment agreements may include provisions for the assessment of interest, administrative penalties, or both.

(d) Nothing in these rules is intended to prevent concurrent administrative, civil, or criminal investigation and action. Subject to express statutory limitations, the OIG may proceed with recoupment or other administrative enforcement concurrently with judicial prosecution of the same matter.

(e) An OIG case remains open until:

(1) the investigation is complete;

(2) the case is settled;

(3) the OIG makes an administrative determination that closes the case for lack of evidence or appropriate administrative enforcement; or

(4) all administrative remedies have been exhausted.

(f) Except as provided in other statute, rule, or regulation [~~In determining the appropriate administrative action or sanction, including the amount of any administrative penalty to assess~~], the OIG, when making a preliminary determination, will take into consideration the following when determining the appropriate administrative action or sanction, including the amount of any administrative damages and penalties [~~considers~~]:

(1) the seriousness of the violation;

(2) the prevalence of errors by the person [~~provider~~];

(3) the financial or other harm to the state or recipients resulting or potentially resulting from those errors; [~~and~~]

(4) whether the person had previously committed a violation;

(5) any [~~aggravating or~~] mitigating factors; and [~~the OIG determines appropriate.~~]

(6) in the event the OIG opts to pursue administrative penalties, the amount of administrative penalty necessary to deter the person from committing future violations.

(g) When determining the seriousness, prevalence of error, harm, or potential harm of the violation, as described in subsection (f) of this section, the OIG may consider multiple factors. These factors [~~The following may be considered as aggravating factors that warrant more severe or restrictive action by the OIG. Aggravating factors~~] may include:

[~~(1) harm to one or more patients;~~]

(1) [~~(2)~~] physical or emotional [~~the severity of patient~~] harm to one or more patients;

(2) [~~(3)~~] one or more violations that involve more than one patient;

(3) [~~(4)~~] economic harm to any individual or entity [~~and the severity of such harm~~];

(4) [~~(5) increased~~] potential for harm to the public;

(5) [~~(6)~~] attempted concealment of the act constituting a violation;

(6) [~~(7)~~] intentional, premeditated, knowing, or grossly negligent act constituting a violation;

(7) [~~(8)~~] prior similar violations;

(8) [~~(9)~~] previous disciplinary action by a licensing board, any government agency, peer review organization, or health care entity for committing a violation or violations relevant to the violation or violations under consideration by the OIG;

(9) [~~(10)~~] violation of a licensing board or government agency order concerning a violation or violations relevant to the violation or violations under consideration by the OIG; or

(10) [~~(11)~~] other [~~relevant~~] circumstances relevant to [~~increasing~~] the seriousness of the misconduct.

(h) The following may be considered as mitigating factors that warrant less severe or restrictive administrative action or sanction by the OIG, as described in subsection (f) of this section. The person seeking mitigation [~~provider~~] shall have the burden to present evidence regarding any mitigating factors that may apply in any contested [~~the particular~~] case. OIG may consider any mitigating evidence the agency becomes aware of while making a preliminary determination regarding an appropriate administrative action or sanction. Once the OIG issues a notice that the agency intends to impose a sanction upon a person, including a preliminary penalty report, then the person subject to that notice or preliminary report shall provide any mitigating evidence that the person wishes the OIG to consider to the OIG before any scheduled

informal resolution meeting or informal review. Mitigating factors may include:

(1) self-reported and voluntary admissions of a violation or violations [~~violation(s)~~];

(2) implementation of remedial measures to correct or mitigate harm from the violation or violations , such as: [~~violation(s);~~]

(A) the extent and expeditious initiation of the person's own investigation;

(B) resources that the person committed to correcting or mitigating the problem;

(C) disciplinary action or actions that the person has taken against the individuals responsible for the problem; and

(D) institutional change or changes made by the person in order to ensure compliance and prevent future violations;

(3) acknowledgment of wrongdoing and willingness to cooperate with the OIG, such as [~~evidenced~~] by acceptance of a settlement agreement;

(4) rehabilitative potential;

(5) prior community service and present value to the community;

(6) other relevant circumstances reducing the seriousness of the misconduct; or

(7) other relevant circumstances lessening responsibility for the misconduct.

(i) This rule shall not be construed to deny any person potentially subject to an administrative sanction imposed by the OIG, including administrative damages or penalties, the right to introduce mitigating evidence in a contested case proceeding. This rule also shall not be construed to deny the OIG the right to introduce any evidence supporting any of the factors described above in a contested case proceeding in which the agency seeks to impose an administrative sanction, including administrative damages or penalties, upon a person. [~~Any administrative penalties assessed are determined as provided in §371.1715 of this chapter (relating to Damages and Penalties).~~]

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

Filed with the Office of the Secretary of State on December 2, 2019.

TRD-201904509
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 491-4058

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# DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

## 1 TAC §371.1715

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.102 (a), which provides HHSC-OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the executive commissioner, in consultation with the office, shall adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; 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 provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e) HHSC with the authority to adopt rules necessary to implement this section; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to more damages and penalties.

The amendments affect Texas Government Code §§531.0055 and 531.102 and implement Human Resources Code, Chapter 32 and Government Code, Chapter 531.

*§371.1715. Damages and Penalties.*

(a) The OIG may assess administrative [~~damages,~~] penalties otherwise authorized by law on behalf of the commission or a health and human services agency [~~, or both against a person pursuant to §32.039, Texas Human Resources Code~~].

(b) Any administrative penalties or damages assessed for violations related to health care items or services that are authorized or provided under federal law, including claims submitted by persons for payment under the Medicaid program, are determined as provided in Texas Human Resources Code, §32.039. The OIG will also follow the procedures for imposing penalties or damages in Texas Human Resources Code, §32.039, which include opportunities for a person subject to potential penalties or damages to have an informal review and an appeal, and apply the factors in accordance with §371.1603 of this subchapter (relating to Legal Basis and Scope).

[~~(b) When determining whether or not a person is prohibited from providing or arranging to provide health care services under the Medicaid program, the OIG considers the following:~~]

[~~(1) the person's knowledge of the violation;~~]

[~~(2) the likelihood that education provided to the person would be sufficient to prevent future violations;~~]

[~~(3) the potential impact on availability of services in the community served by the person; and~~]

[~~(4) any other reasonable factor identified by the OIG.~~]

(c) This rule shall not be construed to deny any person potentially subject to an administrative sanction imposed by the OIG, including administrative damages or penalties, the right to introduce mitigating evidence in a contested case proceeding. This rule also shall not be construed to deny the OIG the right to introduce any evidence supporting any of the factors described in §371.1603 of this subchapter (relating to Legal Basis and Scope) in a contested case proceeding in

which the agency seeks to impose an administrative sanction, including administrative damages or penalties, upon a person. [~~The OIG gives notice of a preliminary penalty report and of its final assessment of penalties to the person charged with committing the violation, pursuant to §32.039, Texas Human Resources Code.~~]

(d) Due process.

(1) After service of a notice of preliminary report recommending the assessment of an administrative penalty, a person has a right to make a written request for an informal review not later than the tenth day after service of the notice.

(2) After receiving written [~~service of a final~~] notice of the results of an informal review [~~assessment of penalties~~], a person may make a written request for an administrative appeal hearing no later than ten days after the date of service of the notice.

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

Filed with the Office of the Secretary of State on December 2, 2019.

TRD-201904510
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 491-4058

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# TITLE 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 24. HEMP PROGRAM

The Texas Department of Agriculture (TDA or the Department) proposes new Title 4, Part 1, Chapter 24, Hemp Program, Subchapter A, General Provisions, §§24.1 - 24.4; Subchapter B, Fees, §§24.5 - 24.7; Subchapter C, Licensing, §§24.8 - 24.19; Subchapter D, Inspections, Sampling and Collection, §§24.20 - 24.23; Subchapter E, Testing, §§24.24 - 24.29; Subchapter F, Disposal, §24.30 and §24.31; Subchapter G, Enforcement, §§24.32 - 24.38; Subchapter H, Transportation, §§24.39 - 24.43; Subchapter I, Seed, §§24.44 - 24.48; and Subchapter J, Agricultural or Academic Hemp Related Research, §24.49 and §24.50. The proposed new rules are for TDA's administration of hemp production to comply with the Agricultural Improvement Act of 2018 (2018 Farm Bill) enacted by the 115th United States Congress, and House Bill 1325 (HB 1325) enacted by the 86th Texas Legislature. The proposed rules will regulate and license the growth and distribution of hemp and nonconsumable hemp products in Texas.

Phillip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, has determined that there will be significant fiscal impact to state government as a result of implementing the proposed rules. The program and all associated direct and indirect costs will be absorbed by TDA during the first year at a minimum. TDA does not expect any cost to local governments at this time. As hemp production has not been legal in Texas, TDA lacks sufficient information to estimate revenues or engage in cost recovery calculations for this program at this time. However, TDA anticipates that it will be able to recover the costs of the program based on the number of licenses issued and sampling conducted. As a reference, Kentucky Department of Agriculture issued 1030 applications and 1000 permits, and the Tennessee Department of Agriculture received 2600 applications for the 2019 growing season under their Hemp Research Pilot Programs, which limited hemp production to research purposes only, in accordance with the Agriculture Act of 2014. Since the proposed rules allow for hemp production outside and beyond research purposes, in accordance with the 2018 Farm Bill and HB 1325, TDA anticipates a higher number of applications received and permits issued for Texas' 2020 growing season compared to Kentucky's and Tennessee's 2019 growing season.

Mr. Wright has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit as a result of administering the proposed rules will be to provide Texas farmers with new agricultural opportunities to produce and handle hemp. As with many state regulations, affected producers and industry will absorb costs associated with the compliance of these rules. However, TDA lacks sufficient data to quantify the effect on small and micro-businesses at this time. The cost of compliance with the rules related to hemp production will depend on various factors, including the size of the operation. TDA does not anticipate that there will be an adverse fiscal impact on rural communities related to the implementation of this proposal. Any potential increases in the cost of doing business will be offset by the increased marketing and sales opportunities for Texas producers.

Mr. Wright has also 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) the TDA Hemp Program will be created;

(2) an additional 7.1 full time employee positions may be created over the course of 5 years, and no existing Department staff positions will be eliminated; and

(3) there may be an increase in future legislative appropriations to the Department of at least $3,127,336 to cover costs to include the creation of new employee positions, and the regulation and administration of the hemp program, over the course of 5 years.

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

(1) there will be an increase in fees paid to the Department, as this program is entirely new and TDA is required to assess license and/or inspection fees in order to implement or finance this program;

(2) new regulations will be created by the proposal;

(3) the number of individuals subject to the proposal will increase, as this is a new program; and

(4) the proposal will positively affect the Texas economy by allowing producers to grow hemp in the State.

The Texas Department of Agriculture invites comments on the proposed new rules from any member of the public. Comments may be submitted to Philip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to *RuleCom-*

*ments@TexasAgriculture.gov.* Comments must be received by TDA no later than January 17, 2020.

## SUBCHAPTER A. GENERAL PROVISIONS

**4 TAC §§24.1 - 24.4**

New Title 4, Part 1, Chapter 24, Hemp Program, Subchapters A through J is proposed in compliance with the 2018 Farm Bill and HB 1325, which authorize the Department to establish rules concerning the production of hemp in the State of Texas.

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.1. Definitions.*

Words used in this chapter in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this chapter, unless the context otherwise requires, the following terms shall mean:

(1) "Act" means Texas House Bill 1325, relating to the production and regulation of hemp in Texas, as codified in Chapters 121 and 122 of the Code.

(2) "Acceptable hemp THC level" means a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" affects neither the statutory definition of hemp, in 7 U.S.C. §1639o(1) and Texas Agriculture Code §121.001, nor the definition of "marihuana," in 21 U.S.C. §802(16) and in Texas Health and Safety Code §481.002(26).

(3) "Administrative action" includes a denial, revocation or suspension of a license, or an assessed penalty.

(4) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Department's hemp program.

(5) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

(6) "Certified or Approved hemp seed" means seed that meets the legal standards for seed quality and labeling required by Texas and federal law; the legal standards of the jurisdictions from where the seed is originally sold and produced, and the additional hemp seed quality and labeling requirements required by the Department.

(7) "Commissioner" means the Commissioner of the Texas Department of Agriculture.

(8) "Contiguous" means all of the lots in or on a location owned or controlled by one owner or tenant, or the same owner and tenant, and no lot is separated from the other lots on the location by different ownership or control, or a public right of way, a navigable waterway, or an area greater than sixty feet.

(9) "Controlled Substance" is defined in Tex. Health & Safety Code §481.002(5). The term does not include hemp, as defined by Tex. Agric. Code §121.001, or the tetrahydrocannabinols in hemp.

(10) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this chapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this chapter.

(11) "Corrective action plan" means a plan established by the Department for a licensed hemp producer to correct a negligent violation or non-compliance with the hemp program, this chapter, or other state or federal statute.

(12) "Criminal History Report" means the results of a criminal background investigation conducted by the Department.

(13) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

(14) "Cultivate" as defined by Tex. Agric. Code §122.001(1) means to plant, irrigate, cultivate or harvest a hemp plant.

(15) "Days" means business days unless otherwise specified.

(16) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.

(17) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.

(18) "Delta-9 tetrahydrocannabinol or THC or Delta-9-THC" means the primary psychoactive component of cannabis. For the purposes of this chapter, the terms delta-9-THC and THC are interchangeable.

(19) "Department or TDA" means the Texas Department of Agriculture.

(20) "Drug Enforcement Administration or DEA" means the United States Drug Enforcement Administration.

(21) "DPS" means the Texas Department of Public Safety.

(22) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. Dry weight is a basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. The percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

(23) "Entity" means a corporation, general partnership, joint stock company, association, limited partnership, limited lia-

bility partnership, limited liability company, series limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization. The term entity includes a domestic or foreign entity defined in Texas Business Organizations Code §1.002 that will be, or proposes to be, in hemp production within the State of Texas.

(24) "Facility" means a location with a legal description and is within the legal control of a person or entity. A facility may consist of multiple fields, greenhouses, storage, and/or lots.

(25) "Farm Service Agency or FSA" means an agency of the United States Department of Agriculture.

(26) "Field" means an outdoor area of land consisting of one or more lots on which the producer will produce or store hemp.

(27) "Final test" means the last Department-authorized laboratory test conducted from a final sample collected.

(28) "Final sample" means the last Department-authorized sample collected from a lot.

(29) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

(30) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object. This includes GPS coordinates.

(31) "Greenhouse" means any indoor structure consisting of one or more lots on which the producer will produce or store hemp.

(32) "Governing person" has the meaning assigned by Tex. Bus. Orgs. Code §1.002.

(33) "GPS" means Global Positioning System.

(34) "Handle," as defined by Tex. Agric. Code §122.001(3) means to possess or store a hemp plant on premises owned, operated, or controlled by a license holder for any period of time, or in a vehicle for any period of time other than during the actual transport of the plant from a premises owned, operated or controlled by a license holder to a premises owned, operated or controlled by another license holder, or a person licensed under Tex. Health & Safety Code, Chapter 443. "Handle" also means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. "Handle" also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.

(35) "Harvest" means to cut, gather, take, or remove all or part of the cannabis plants growing in a lot or lots, for the purpose of disposal, cloning, distribution, processing, storage, sale, or any other use. "Harvest" does not include transplants from one lot to another lot if both lots are within the same license holder's control, and the plants are transplanted according to the hemp program rules and procedures.

(36) "Hemp" or "industrial hemp," as defined Tex. Agric. Code §121.001 means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(37) "Hemp research license" means a license issued to an institution of higher education to produce or handle hemp for research purposes.

(38) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

(39) "Information sharing system" means the database which allows the Department to share Texas hemp program information with federal and state agencies.

(40) "Institution of higher education" has the meaning assigned by Texas Education Code §61.003.

(41) "Key participants" means a sole proprietor, a partner in a general partnership, a general partner in a limited partnership, or a person with executive managerial control in an entity. A person with executive managerial control includes persons such as a trustee, independent or dependent executor or administrator of an estate, chief executive officer, managing member, manager, president, vice president, general partner, chief operating officer and chief financial officer, or their equivalents. This definition does not include non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of an entity.

(42) "Law enforcement agency" means any federal or Texas law enforcement agency.

(43) "License," as defined by Tex. Agric. Code §122.001(6) means a hemp producer or handler license issued by the Department.

(44) "License holder," as defined by Tex. Agric. Code §122.001(7) means an individual or business entity holding a license.

(45) "License holder who transplants" means a license holder who cultivates cannabis plants for the purpose of transplanting all living parts of those same cannabis plants according to Department rules and procedures.

(46) "Lot" means a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(47) "Marijuana or marihuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term "marihuana" does not include hemp and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marihuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

(48) "Measurement of Uncertainty (MU)" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(49) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this chapter.

(50) "Nonconsumable hemp product," as defined by Tex. Agric. Code §122.001(8) means a product that contains hemp, other than a consumable hemp product as defined by Tex. Health & Safety Code §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.

(51) "Permit or lot permit" means a document issued by the Department authorizing a license holder to produce or handle a hemp crop within a lot.

(52) "Person" means an individual or entity, unless otherwise indicated.

(53) "Phytocannabinoid" means the Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta- 9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

(54) "Postdecarboxylation" means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.

(55) "Processing" means converting an agricultural commodity into a marketable form.

(56) "Produce" means to cultivate hemp plants in Texas.

(57) "Producer" means a person who produces hemp. A producer also means a person who stores the hemp plants they produced within Department-registered locations.

(58) "Program or hemp program" means the process created by the state of Texas and federal statutes and regulations to facilitate the regulation and cultivation of hemp as a crop.

(59) "Reverse distributor" means a person who is registered with the DEA in accordance with 21 C.F.R. §1317.15 to dispose of marijuana.

(60) "Sample" means a composite, representative portion from one variety of hemp plants in a hemp lot, collected prior to harvest in accordance with Department guidelines and procedures.

(61) "Sample collection date" means the date a hemp sample is collected by the Department or an authorized entity. To determine the sample collection date, the Department may take into consideration events of force majeure or unusual circumstances, including situations beyond a reasonable person's control.

(62) "Seed source" means the origin of the seed or propagules as determined by the Department.

(63) "Specimen" means a cutting taken from a hemp plant.

(64) "The Code" means the Texas Agriculture Code.

(65) "Transplant" means to move a fully germinated seedling, mature plant, cutting, or clone from one lot and to replant it in another permanent lot under the control of the same license holder, for later harvest by the same license holder. Transplant also means a plant, cutting, or clone that has been moved from its initial lot of germination or cultivation for the purpose being transplanted.

(66) "Transport manifest" includes a shipping certificate, cargo manifest or transport document developed by the Department or a U.S. authority, authorizing transport of a hemp product within the State of Texas, any other state, the United States of America, or its territories.

(67) "Signing authority" means an individual of a sole proprietorship, or an officer or agent of an entity with written authorization to commit the entity to a binding agreement or verify the contents of a governmental document.

(68) "Storage" means any structure in which the producer or handler will store hemp.

(69) "TPIA" means the Texas Public Information Act, Texas Government Code, Chapter 52.

(70) "Unique ID" means the unique identifier established by the Department's hemp program.

(71) "USDA" means the United States Department of Agriculture.

(72) "U.S. authority" means the United States of America, USDA or a sub-agency thereof, a state, a US territory, or an Indian Nation, or federal, state or local law enforcement agency.

*§24.2. Information Submitted to the United States Secretary of Agriculture.*

(a) Not more than thirty (30) days after receiving and compiling the following information, the Department shall provide to the United States Secretary of Agriculture, or the Secretary's designee, the following information related to Department-licensed producers, in accordance with the Department's Information Gathering and Sharing Procedure:

(1) Full name, residential or principal business address, telephone number, email address, title of key participants, and employer identification number if applicable;

(2) Street address, and to the extent practicable, geospatial location for each production location where hemp will be produced in Texas;

(3) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp;

(4) The total acreage of hemp planted, or square footage for greenhouses, harvested and if applicable, disposed; and

(5) The status and license number of the license holder.

(b) The Department shall provide real-time updates to USDA for all information that it reports to USDA under this rule, 7 C.F.R. §990.3, or 7 C.F.R.§990.70.

*§24.3. Record Retention.*

The Department shall collect and retain, for a period of at least three (3) calendar years information for every license holder, and location where the Department has approved hemp to be produced or handled.

*§24.4. Information Submitted to the Department Subject to Open Records Act.*

(a) Except as established in subsection (b) of this section, information and documents generated or obtained by the Department in connection with the program shall be subject to disclosure pursuant to the TPIA.

(b) With the exception of information that must or may be reported or provided to USDA, the DEA, DPS, or local law enforcement, the Department shall withhold all personally identifiable information

from disclosure as required or permitted by the TPIA, including physical address, mailing address, driver's license numbers, background checks, geospatial location, telephone, and email addresses.

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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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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## SUBCHAPTER B. FEES

### 4 TAC §§24.5 - 24.7

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.5. Schedule of Licensing and Registration Fees.*

(a) The initial application fee shall be at least $100 for each license application.

(b) The renewal fee shall be at least $100 for each annual license renewal application.

(c) The participation fee shall be at least $100. A participation fee shall be assessed for the following, at a minimum for:

(1) each facility;

(2) each lot; and

(3) a processor registration.

(d) The facility modification fee shall be at least $500 for each modified facility.

*§24.6. Schedule of Testing Fees.*

(a) The laboratory registration fee shall be in an amount established by the Department.

(b) The sampling and collection fee shall be $300. This does not include the testing fee the license holder must pay directly to the registered laboratory.

*§24.7. Other Fees.*

(a) The fee for the organic certification of hemp shall be in an amount established by the Department.

(b) The fee to participate in an optional marketing program shall be in an amount established by the Department.

(c) The fee for certification of seed or plants shall be in an amount established by the Department.

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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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## SUBCHAPTER C. LICENSING

### 4 TAC §§24.8 - 24.19

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.8. License Application.*

(a) Any person who wishes to produce or handle hemp at any location in the State of Texas shall submit to the Department annually a completed license application in a form prescribed by the Department.

(b) A person who does not hold a license from the Department shall not produce or handle hemp within the State of Texas.

(c) An applicant shall pay the required annual fee for each application, renewal or modification of a license.

(d) A license shall not be issued unless:

(1) the application is submitted online to the Department;

(2) the application is complete and accurate;

(3) the applicant has completed a Department mandatory orientation course;

(4) the applicant has paid all required fees, in the amounts established by the Department or statute;

(5) the applicant's criminal history confirms that all key participants covered by the license have not been convicted of a felony, under state or federal law, relating to a controlled substance within the past ten (10) years, unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018;

(6) the application contains no false statements or misrepresentations and the applicant has not previously submitted an application with any false statements or misrepresentations; and

(7) the applicant's hemp license has not been terminated or suspended.

(e) Each applicant shall provide the following information for each license application:

(1) full name, Texas address, telephone number, and email address;

(2) if the applicant is submitting an application on behalf of an entity, the full name of the entity, the principal Texas business location address, the full names, titles, addresses, and emails of key participants, the full name, title, and email of the applicant who will have signing authority, and the Texas taxpayer ID number;

(3) street address and geospatial location including GPS for each facility where hemp will be cultivated or stored;

(4) maps depicting each location where hemp will be cultivated or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the geospatial location or GPS coordinates;

(5) proof of ownership or control over the location where hemp will be cultivated or stored; and

(6) all other information required by the Department.

(f) Licenses will not be automatically renewed, and must be renewed annually prior to license expiration. Renewal applications are subject to the same terms, information collection requirements, and approval criteria as required for initial applications.

(g) A licensee must submit a license modification if there is any change to the information submitted in the application including, but not limited to, sale of a business, a change in or new location of the facility for the production, handling, or storage of hemp in Texas, or a change in the key participants.

(h) The Department shall notify each applicant by letter or email of the denial or approval of the person's application.

*§24.9. Ineligibility for a License.*

(a) A person under the age of eighteen (18) years of age at the time the application is submitted to the Department is ineligible for a license.

(b) A person who has had a hemp license revoked by the Department, USDA, another state, Indian nation, or U.S. territory is ineligible to apply for participation in the TDA hemp program for a period of five (5) years from the date of revocation. Upon application following the five-year exclusionary period, the Department may deny an application for any lawful reason, including previous conduct that occurred while licensed by the Department, USDA, another state, Indian nation, or U.S. territory.

(c) A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a License or be a governing person of a business entity that holds a License unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

(d) A person who falsifies any information contained in a license application to TDA, or has previously submitted an application to the Department, USDA, another state, Indian nation, or U.S. territory with any materially false statements or misrepresentations is ineligible for a license.

*§24.10. Criteria for Evaluation of License Application.*

(a) The applicant shall submit a complete application with all required components and attachments.

(b) The applicant's history with other TDA programs, if any, shall demonstrate a willingness to comply with the Department's rules and instructions from Department staff.

(c) The applicant shall be in good standing with TDA.

(d) The applicant must not have a criminal conviction described in this subchapter.

*§24.11. Criminal Background Check.*

(a) Each applicant, including each key participant and individual signing an application on behalf of an entity, shall undergo and pay for an annual criminal background check.

(b) Each license holder must undergo and pay for an additional criminal background check if it changes, prior to the anniversary date of its license, its signatory for its license, or adds a key participant not previously identified on an application or renewal application.

(c) Each license holder or applicant is required to pay, as a condition to initial or continued licensure under the program, all required criminal background check fees assessed by the Department.

*§24.12. Administrative Appeal from Denial of License Application.*

(a) A license applicant may appeal the denial of a license application.

(b) If the Department sustains an applicant's appeal of a licensing denial, the applicant will be issued a license.

(c) If the Department denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days in writing to review the decision. Such proceeding shall be conducted pursuant to Chapter 12 of the Code.

*§24.13. Terms and Conditions for License Holders.*

(a) As an initial and continuing condition of licensure under the Department's Hemp program, a license holder consents to entry on and inspection of all locations identified in an initial or renewal application, and all land and premises where hemp or other cannabis plants or materials are located. Such consent includes representatives of the Department or U.S. authority, who may enter such location(s), land, and premise(s) with or without cause, and with or without advance notice.

(b) As an initial and continuing condition of licensure under the Department's hemp program, a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15, and without compensation from the State of Texas, USDA or the federal government, any:

(1) Material found in excess of an acceptable hemp THC level;

(2) Plants located in an area that is not licensed by the Department; and

(3) Plants not accounted for in required reporting to the Department.

(c) A license holder shall not sell, assign, loan, transfer, pledge or otherwise dispose of, alienate or encumber a license. A license is not transferable upon the death of a license holder, except upon the death of a license holder the independent or dependent executor of the deceased license holder may contract with another license holder to cultivate, harvest, handle, test, and convey the hemp crop existing at the time of the license holder's death.

(d) A license holder shall not produce or handle hemp in any location other than the location listed in an initial or renewal application or facility addition or modification request.

(e) A license holder, other than a Hemp Research License Holder, shall not interplant hemp with any other crop without express written permission from the Department.

(f) A license holder shall comply with restrictions established by the Department limiting the movement of hemp plants and plant parts.

(g) A license holder shall ensure that at any time hemp is in transit, whether in intrastate or interstate commerce, a Department issued transport manifest shall be available for inspection upon the request of a representative of the Department, or US authority.

(h) Upon request from a representative of the Department, or US authority, a license holder shall immediately produce a copy of his or her license for inspection.

(i) A license holder shall notify the Department of any interaction with any US authority, within twenty-four (24) hours following such interaction, by telephone call to the Department and follow-up in writing to the Department within three (3) calendar days of the occurrence.

(j) A license holder shall notify the Department of any theft of cannabis materials, whether growing or not.

(k) A license holder shall report to the USDA, Agricultural Marketing Service, or Farm Service Agency, consistent with USDA requirements:

(1) their license or authorization number, street address, and geospatial location of each lot where hemp is and will be produced; and

(2) the acreage dedicated to the production of hemp, or greenhouse indoor square footage dedicated to the production of hemp, and the total acreage or square footage of hemp planted, harvested and if applicable, disposed.

(l) Failure to comply with this chapter, or any procedure or process established by the Department related to the cultivation, handling, processing, testing, storage or transport of hemp, or any request by the Department related to the cultivation, handling, processing, testing, storage or transport of hemp, shall constitute grounds for appropriate enforcement action including, without limitation, the assessment of administrative penalties, the requirement to undertake corrective action, the denial of an initial or renewal application, the revocation of a producer's license, the referral to other state and federal agencies for civil or criminal action, or any combination of such remedies by the Department.

*§24.14. Restrictions for License Holders.*

(a) A license holder shall not produce any cannabis that is not hemp.

(b) A license holder shall not produce hemp or other cannabis on a facility unless the facility is identified on an application, renewal application or facility addition or modification request approved by the Department.

(c) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the Department.

(d) An applicant or license holder shall not include any real property on an application or facility addition or modification request that is not owned or completely controlled by the applicant or license holder, to produce hemp.

(e) A license holder shall not produce or handle hemp or other cannabis on real property owned by or leased from:

(1) a person who is ineligible for licensure under the Department's hemp program; or

(2) a person whose application or renewal application for participation in the Department's hemp program was denied, or whose license was terminated or revoked.

(f) The legal cultivation of cannabis in another state pursuant to the authorization granted by said state shall not prevent a person from holding a license in Texas.

*§24.15. License Holders who Transplant.*

(a) In order to be eligible to transplant cannabis plants:

(1) a license holder must acquire a lot permit for the initial area of cultivation, and a lot permit for each final transplantation area.

(2) a license holder who transplants must indicate in the lot permit application for the initial area of cultivation, all final transplantation areas, and anticipated dates of transplants.

(3) a license holder who transplants shall maintain all recordkeeping required for each lot permit, including submission of all lot reports.

(b) The area where a license holder who transplants initially cultivates cannabis plants and the final transplantation areas shall constitute separate lots. The license holder who transplants shall pay the associated fee for each lot permit.

(c) In the event the initial area of cultivation is not within the same facility as the final transplantation area, the license holder who transplants must request a transport manifest from the Department before transporting a lot of cannabis plants to a separate facility for transplanting purposes. A transport manifest shall be valid for five (5) days from the date of issuance.

(d) A sale or transfer of a lot of cannabis plants from a license holder to another license holder for transplant is considered a harvest.

*§24.16. Facility Addition or Modification.*

(a) A license holder who elects to produce or handle hemp in a facility other than the facility specified by the geospatial location in the applicant's original licensing application shall register the new facility by submitting a *facility addition or modification request* form and obtain written approval from the Department for the new facility.

(b) In the event the geospatial location of a facility previously registered with the Department changes, the license holder must submit a *facility addition or modification request* form and obtain written approval from the Department for the modified facility.

(c) Once a license holder obtains approval from the Department, the license holder may cultivate, handle or produce hemp at the newly added or modified facility.

(d) The Department shall not process or approve a facility addition or modification request until the Department has received the required forms and fees.

*§24.17. Lot Permit.*

(a) A license holder must acquire a lot permit from the Department for each lot where the license holder intends to produce or handle hemp prior to producing or handling hemp. The applicant shall submit, at a minimum:

(1) License number, geospatial location of the lot where the hemp variety will be planted, the facility where the lot is located, and anticipated dates of cultivation.

(2) An application that is missing required information shall be subject to denial.

(b) A change in the geospatial location of a lot where the hemp variety will be planted will be considered by the Department as a new lot.

*§24.18. Reporting and Recordkeeping.*

(a) License holders shall maintain records and reports of all hemp plants acquired, produced, handled or disposed for at least three years, using a Department form.

(b) All records shall be maintained and made available for inspection by Department inspectors, US authorities, or their representatives, during reasonable business hours. The following records must be made available:

(1) Records regarding acquisition of hemp seed or cultivars;

(2) Records regarding production of hemp;

(3) Records regarding handling of hemp;

(4) Records regarding disposal of all cannabis plants that, upon testing by the Department, the license holder, or US authority, exceeds the acceptable hemp THC level; and

(5) Records regarding the transport or proposed transport of hemp, including transport manifests.

(c) All reports and records required to be submitted to the Department as part of participation in this program which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular license holder or their customers, shall be received by, and at all times kept in the custody and control of, the Department and its employees in accordance with the requirements of Texas law and the Department's information security procedures and policies. Confidential data or business information may be shared with US authorities, or their designees. License holders are responsible for identifying all of the license holder's confidential data or business information, including but not limited to information constituting a trade secret or trade positions, financial conditions, or business operations of the particular license holder or its customers which the license holder deems to be protected from disclosure by the Department. Such identification must be made by separate written communication to the Department specifically identifying the information sought to be protected by the license holder.

*§24.19. Registration of Processors.*

(a) All persons who intend to process hemp products shall register with the Department.

(b) Only a processor registered with the Department shall process hemp products in the State of Texas.

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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Ferjie Ruiz Hontanosas
Assistant General Counsel
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## SUBCHAPTER D. INSPECTIONS, SAMPLING AND COLLECTION

### 4 TAC §§24.20 - 24.23

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.20. Site Access for Representatives of the Department and Law Enforcement Agencies.*

(a) The Department, the DEA, DPS, and local law enforcement agencies, along with their representatives and employees, shall be provided with complete and unrestricted access to all hemp plants, whether growing or harvested, and all facilities used for the production and storage of all hemp in all locations where hemp is produced or handled.

(b) The Department shall conduct random inspections of license holders to verify the production and handling of hemp complies with applicable state and federal law.

(c) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at each lot undergoing sampling and testing.

*§24.21. Sampling and Collection.*

(a) Sampling and Collection Notification.

(1) A completed *sample request* form from a license holder shall be submitted to the Department at least 15 days prior to the expected harvest date.

(2) The Department's receipt of a *sample request* form triggers a site inspection and sample collection by a Department inspector.

(3) The license holder shall pay the sampling and collection fee established by the Department.

(b) Sampling and Collection.

(1) The material selected for sampling will be determined by the Department's Sampling and Collection Procedure.

(2) If the license holder fails to complete harvest within fifteen (15) days of sample collection, a secondary sample of each lot to be harvested shall be collected and submitted for testing. The license holder must notify the Department of a delay in harvesting by submitting another, or second, complete, *sample request* form to initiate a second or subsequent sample collection from each lot to be harvested.

(3) The Department will grant or conduct no more than two (2) sample requests per lot. The Department may grant or conduct additional sample requests under unusual circumstances, including an event unforeseeable by a reasonable person.

(4) A separate sample must be taken for each lot.

(5) Samples shall be labeled and prepared for transport to the laboratory for testing in accordance with the Department's Sampling and Collection Procedure.

*§24.22. Lot Report.*

(a) A license holder shall provide a *lot report* to the Department no later than the 30th day after a final sample is collected from a lot, or no later than 180 days from the lot permit issue date, whichever is earlier.

(b) A *lot report* shall be provided using a Department form and must contain the following information at a minimum, regarding the particular lot:

(1) License holder account number;

(2) Facility ID and lot ID;

(3) Sample(s) ID(s) and test ID(s);

(4) Disposition of cannabis plant materials produced or handled within the lot (e.g. harvest, disposal, transplanting, cloning, distribution, processing, sale, or other use) and any Department-issued transport manifest;

(5) Total acres or square footage of cannabis plant material produced or handled; and

(6) A certified statement indicating whether or not any living cannabis plants remain in any lot identified in the *lot report.* In the event any living cannabis plants remain in any lot identified in the *lot report,* the license holder shall further provide a certified statement indicating whether the license holder intends to dispose of or cultivate the remaining, living cannabis plants.

(c) The license holder shall report and certify disposal of cannabis plants to the Department in the *lot report* and include a description of the date and method of disposal.

(d) In the event the license holder cultivates the remaining, living cannabis plants, the license holder shall register the location(s) of the remaining, living cannabis plants as new lots and pay the applicable participation fee.

*§24.23. Other Activities.*

(a) A license holder shall not harvest a cannabis crop prior to samples being collected.

(b) The license holder shall harvest the crop not more than 15 days following the date of sample collection by the Department, unless specifically authorized in writing by the Department.

(c) Prior to processing, cannabis from harvested lots shall not be commingled with cannabis from other harvested lots or other material without prior permission from the Department.

(d) A license holder may not sell or use harvested plants unless a test of the sample(s) for the lot associated with the harvested plants is at or below the acceptable hemp THC level.

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Ferjie Ruiz Hontanosas
Assistant General Counsel
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## SUBCHAPTER E. TESTING

### 4 TAC §§24.24 - 24.29

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.24. Testing Laboratory.*

(a) Registration.

(1) An independent testing laboratory, or a laboratory in an institution of higher education, must be registered with the Department before performing any test related to the Department hemp program.

(2) An independent testing laboratory or a laboratory in an institution of higher education shall submit a complete application for registration in a form prescribed by the Department.

(3) An independent testing laboratory or a laboratory in an institution of higher education must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 and must be registered with DEA.

(b) Registered Laboratories

(1) A list of Department-registered laboratories shall be available to license holders on the Department website.

(2) A license holder may test a hemp sample using a registered laboratory in accordance with Tex. Agric. Code §122.151(c).

(3) A license holder who uses a registered laboratory shall pay that laboratory's fees.

(c) State of Texas Laboratory

(1) A license holder may test a hemp sample using the State of Texas (State) Laboratory.

(2) The State Laboratory shall be used if the license holder fails to use a registered laboratory.

(3) A license holder shall pay the State laboratory fees.

*§24.25. Standards for Testing.*

Analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol (THC) in the flower material of the cannabis plant shall meet the following standard:

(1) Laboratory quality assurance must ensure the validity and reliability of test results;

(2) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;

(3) The demonstration of testing validity must ensure consistent, accurate analytical performance; and

(4) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this subchapter.

*§24.26. Methods for Testing.*

(a) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate the measurement of uncertainty.

(b) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Department.

(c) The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas or liquid chromatography with detection.

(d) Alternative testing protocols will be considered by the Department if they are comparable and similarly reliable to the baseline established under the Department program. Alternative testing protocols must be requested of the Department in writing and approved in writing by the Department, provided they meet the requirements of this subchapter.

*§24.27. Testing Procedure.*

(a) The laboratory shall test samples in accordance with Department "Testing Procedure".

(b) The laboratory shall maintain the chain of custody of each sample using a form prescribed by the Department.

(c) The laboratory shall retain the sample for a minimum of thirty (30) business days from the sample collection date.

*§24.28. Reporting Test Results.*

(a) The laboratory shall send the test results electronically to the Department and license holder no later than the fourteenth (14th) business day from the sample collection date.

(b) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with the test results.

(c) Any sample test result showing with at least 95% confidence that the THC content of the sample exceeds the acceptable hemp THC level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed. If the results of a test conclude that the THC levels of a sample conclusively exceeds the acceptable hemp THC level, the laboratory will promptly notify the producer and the Department or its authorized agent.

*§24.29. Retest.*

(a) A license holder may request a retest of the original sample within five (5) days from the date the license holder receives the results of the first test.

(b) A license holder requesting a retest must use the laboratory that conducted the initial test.

(c) The laboratory shall use the original sample, used in the first test, for the retest.

(d) The results of the retest are final.

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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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7476

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## SUBCHAPTER F. DISPOSAL

### 4 TAC §24.30, §24.31

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.30. Notice Procedures.*

(a) The license holder shall submit a completed *disposal report* to the Department no later than seven (7) days after the license holder receives a final test result exceeding the acceptable hemp THC level.

(b) The Department's receipt of a *disposal report* triggers a potential field inspection by a Department inspector.

(c) The Department will inform the license holder no later than seven (7) days after receiving the *disposal report* of the approved method of disposal.

*§24.31. Non-compliant Cannabis Plants.*

(a) Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a Schedule I controlled substance, which must be disposed of in accordance with the federal Controlled Substances Act (CSA) in 21 C.F.R. §13 and DEA regulations in 21 C.F.R. §1317.15.

(b) A final test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is non-compliant with state and federal law. The cannabis on that lot may *not* be further handled, processed, or enter the stream of commerce, other than for disposal purposes in strict compliance with the CSA and DEA regulations.

(c) Disposal of Non-compliant Cannabis Plants.

(1) Within five (5) days of receiving a notice of disposal from the Department, the license holder shall contact an appropriate DEA-registered reverse distributor or other authorized person or entity to request disposal of the non-compliant cannabis plants in strict compliance with the CSA and DEA regulations.

(2) The license holder shall pay all costs and fees required for the destruction of non-compliant cannabis plants and shall surrender such plants to the DEA-registered reverse distributor or other authorized person or entity for disposal in accordance with DEA regulations, without compensation from TDA, the State of Texas, or US authorities.

(d) License holders must notify USDA and the Department of intent to dispose of non-compliant cannabis plants and verify disposal by maintaining and submitting records of the disposal.

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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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7476

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## SUBCHAPTER G. ENFORCEMENT

### 4 TAC §§24.32 - 24.38

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.32. Complaints.*

(a) Any person with cause to believe that any provision of the Code or this chapter, related to the Department hemp program, has been violated or not complied with by a license holder, may file a complaint with the Department. The Department will accept either a written or oral complaint, but may require the completion and signing of a complaint form before conducting an investigation into the circumstances or situation giving rise to the complaint.

(b) Upon receipt of an acceptable complaint, the Department will investigate the complaint and make a written report.

(c) The Department's written report will be made available to the public to the extent authorized by the TPIA.

(d) The Department shall, as soon as possible, notify the person(s) believed to be responsible for the acts, omissions, circumstance(s) and situation(s) described in the complaint, and the owner or lessee of the land where the incident(s) allegedly occurred of the existence of the complaint.

(e) The Department will not find a violation based solely on the uncorroborated statements of an anonymous or unidentified complainant; however, the Department routinely investigates all such complaints. The Department will determine the extent of the investigation and resources which are necessary to address any particular complaint.

*§24.33. Negligent Violations.*

(a) A hemp producer shall be subject to enforcement for negligently producing hemp or for negligently producing cannabis (marijuana) which exceeds the acceptable hemp THC level.

(b) Negligent violations shall include, but not be limited to:

(1) Failure to provide a legal description or geospatial location of the facility on which the license holder produces or stores hemp;

(2) Failure to obtain a license or other required authorization from the Department; or

(3) Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.

(c) Hemp producers do not commit a negligent violation under this chapter if they make reasonable efforts to grow hemp, and after sampling and testing, the cannabis (marijuana) does not produce a test result showing a delta-9 tetrahydrocannabinol concentration for the lot's sample of more than 0.5 percent on a dry weight basis.

(d) For each negligent violation, the Department will issue a Notice of Violation and require the license holder to submit a corrective action plan. The Department shall review the corrective action plan and determine if the corrective action plan meets the requirements of 7 C.F.R. §990, the Code, this chapter, and the Department's other requirements. If the Department approves the corrective action plan, the license holder shall comply with the corrective action plan to cure the negligent violation. If the Department denies the corrective action plan, the license holder's license shall be revoked. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

(1) The date by which the license holder shall correct each negligent violation;

(2) Steps to correct each negligent violation; and

(3) A description of the written procedures to demonstrate compliance with applicable law and the Department's policies and procedures, which may include additional reporting requirements to show such compliance.

(e) A license holder that negligently violates this chapter shall not, as a result of that violation, be subject to any criminal enforcement action in Texas.

(f) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(g) A license holder that negligently violates the terms of a license three (3) times in a five-year period shall have their license revoked and be ineligible to produce hemp for a period of five (5) years, beginning on the date of the third violation.

(h) The Department or any U.S. authority along with their authorized representatives and employees shall conduct inspections to determine if the corrective action plan has been implemented.

*§24.34. Violations with a Culpable Mental State Greater than Negligence.*

(a) In addition to being subject to license suspension, license revocation, and monetary civil penalty procedures established in this chapter, a person who is found by the Department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(b) The Department shall immediately report a person who is found by the Department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the following law enforcement agencies:

(1) The Attorney General of the United States;

(2) The Texas Department of Public Safety;

(3) The Office of the Texas Attorney General; and

(4) Other law enforcement authorities with jurisdiction over the producer's acts or omissions that are the subject of the report.

*§24.35. License Suspension.*

(a) The Department may issue a notice of suspension to a license holder if the Department or its representative receives credible evidence establishing that a license holder has:

(1) Engaged in conduct, being either an act or omission, violating a provision of this chapter; or

(2) Failed to comply with a written order from the Department related to negligence as defined in this chapter.

(b) Any license holder whose license has been suspended shall not cultivate, handle or remove hemp or cannabis from any location where hemp or cannabis was located at the time when the Department issued its notice of suspension, without prior written authorization from the Department.

(c) Any person whose license has been suspended shall not produce or handle hemp during the period of suspension.

(d) A license holder whose license has been suspended may appeal that decision in accordance with this subchapter.

(e) A license holder whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension, subject to the terms of a five-year revocation as stated above

(f) A license holder whose license has been suspended may be required to complete a corrective action plan to fully restore the license.

*§24.36. License Revocation.*

The Department shall immediately revoke a license if a person:

(1) Pleads guilty to, or is convicted of, any felony related to a controlled substance under Texas law, federal law or the law of any other state;

(2) Makes a false statement or provides false information or documentation to the Department or its representatives, with a culpable mental state greater than negligence; or

(3) Is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence, or negligently violated this chapter three (3) times in five (5) years.

*§24.37. Penalties.*

Section 12.020 of the Code, which provides for the assessment of administrative penalties, applies to a person who violates the Code or this chapter. Failure to pay an administrative penalty assessed by a final order of the Department is a violation of this chapter. Failure to pay a final judgment which assesses a civil penalty in which express findings of a violation are made, and which was entered pursuant to the Code or this chapter, shall also constitute a violation of this chapter.

*§24.38. Appeals.*

(a) Persons who believe they are adversely affected by the assessment of an administrative action may appeal such decision to the Department.

(b) If the Department sustains the appeal of an administrative action, the person will retain their license and not be subject to the administrative action proposed by the Department in all or part.

(c) If the Department denies the appeal of an administrative action, the license will be revoked or suspended and any administrative action will be imposed. The person may request a formal adjudicatory proceeding in accordance with Chapter 12 of the Code.

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

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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7476

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## SUBCHAPTER H. TRANSPORTATION

### 4 TAC §§24.39 - 24.43

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.39. Transport Manifest Required.*

(a) A Department-issued transport manifest shall be required for the transportation of hemp outside a facility where the hemp was produced.

(b) Hemp produced outside of Texas and transported in Texas shall be accompanied by valid documentation authorized by another state, Indian Nation, or U.S. territory.

*§24.40. Transport Manifests for Test Samples.*

A Department-issued transport manifest shall accompany all test samples collected and transported to a laboratory for testing.

*§24.41. Transport of Pests Prohibited.*

A person may not transport hemp in the State of Texas that contains an agricultural pest or disease as listed in Title 4 of the Texas Administrative Code Chapter 19.

*§24.42. Transplants Originating Outside the State of Texas Prohibited.*

To the extent authorized by the laws and Constitution of the United States, no person shall bring into the State of Texas a cannabis transplant that originated from cannabis plants germinated outside of the State of Texas. A license holder may only cultivate cannabis transplants originating from cannabis plants germinated in Texas.

*§24.43. Mixed Cargo Prohibited.*

A person transporting hemp plant material in the State of Texas shall not concurrently transport any cargo that is not hemp material.

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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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7476

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## SUBCHAPTER I. SEED

### 4 TAC §§24.44 - 24.48

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.44. Certified or Approved Hemp Seed.*

(a) The Department shall maintain and make available to license holders a list of businesses that sell hemp seeds certified or approved for production, sale, offered for sale, or distributed within the State of Texas.

(b) A person may not sell, offer for sale, distribute or use hemp seed in the State of Texas unless the seed is certified or approved by the Department.

*§24.45. License Required to Sell, Possess, Hold or Purchase Hemp Seed.*

After April 1, 2020, a person or entity may not sell, possess, hold or purchase hemp seed unless that person holds a valid and active license issued by the Department for the production and handling of hemp.

*§24.46. Hemp Seed Quality and Labeling Requirements.*

(a) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must meet the legal standards for seed quality and seed labeling required by Texas and federal law, as well the legal standards of the jurisdictions from where the seed is originally sold and produced.

(b) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must also meet the additional hemp seed quality and labeling requirements as provided for by the Department.

(c) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must contain a clear, legible statement on the label in English in addition to any other language on the label indicating the:

(1) specific variety of the hemp seed, or that the hemp seed has no stated variety;

(2) the seller or distributor; and

(3) the location and jurisdiction of origin of the hemp seed.

*§24.47. Hemp Seed Recordkeeping.*

A person who sells, offers to sell, distributes, or uses hemp seed in Texas shall maintain records indicating:

(1) the origin of the hemp seed for five (5) years;

(2) the person or entity from whom the person purchased the hemp seed;

(3) any documentation indicating certification or approval of the provenance, quality, and variety of the hemp seed; and

(4) the location and jurisdiction of origin of the hemp seed.

*§24.48. Certification or Approval of Hemp Seed.*

(a) A person may request the certification or approval of a hemp seed for a particular variety by submitting a completed form prescribed by the Department.

(b) A person requesting for the certification or approval of hemp seed for a particular variety shall provide the following information to the Department:

(1) name of kind and variety, or that the hemp seed has no variety;

(2) a statement concerning the variety's origin, or lack thereof and the breeding procedure used, or lack thereof, in its development including evidence on stability (evidence on stability must include any field test reports and sample test results demonstrating the hemp seed was used to grow hemp plants which tested within the acceptable hemp THC Level);

(3) a completed objective form for the crop as provided by the Department Seed Quality Program, if such form is available. The completed objective description form as provided by the U.S. Plant Variety Protection Office may be used in lieu of the Texas form;

(4) a statement delineating the geographic area or areas of adaptation of the variety; and

(5) such other information as may be requested by the Department which may include but is not limited to:

(A) special characteristics of the seed and of the plant as it passes through the seedling stage and flowering stage; and

(B) other evidence of performance of the variety (date, graphs, charts, pictures, etc.) supporting the identity of the variety, if known. If statements or claims are made concerning performance characteristics, such as yield, tolerance to insects or diseases, or lodging, there must be evidence to support such statements. Statistical analysis of data is encouraged.

(c) The Department may gather the information described in this section to conduct research and analysis to determine the quality and viability of hemp seed varieties for approval by the Department. The Department may partner with Texas A & M University or a State of Texas institution of higher education to conduct research and analysis pertaining to hemp seed varieties.

(d) The Department may revoke a hemp seed variety certification or approval if it determines that the hemp seed variety does not meet the standards described in this section.

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

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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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## SUBCHAPTER J. AGRICULTURAL OR ACADEMIC HEMP RELATED RESEARCH

### 4 TAC §24.49, §24.50

The proposal is made under §§121.003-004 and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

*§24.49. Hemp Research License.*

(a) Texas A&M University or a Texas institution of higher education may apply for a license to produce and handle hemp for agricultural or academic research. A license issued to Texas A&M University or a Texas Institution of higher education pursuant to this section is known as a "Hemp Research License."

(b) In order to obtain a hemp research license, Texas A&M University or a Texas institution of higher education must submit an application and required fees to the Department.

(c) A hemp research license holder must comply with and is solely responsible for compliance with all state and federal laws, rules, and guidelines pertaining to the production and handling of hemp in addition to the laws, rules, and guidelines of any other jurisdiction where such hemp research license holder may produce or handle hemp.

*§24.50. Hemp Research Plan.*

(a) An applicant for a hemp research license must also submit a research plan providing the following information:

(1) A detailed statement specifying the nature and purpose of the hemp related research to be conducted;

(2) All locations where hemp related research will be conducted;

(3) The varieties of hemp to be utilized for the research purposes; and

(4) Such other information as may be requested by the Department.

(b) A hemp research license holder must also submit an annual research plan detailing the location, activities, and the results of the hemp related research conducted by the hemp research license holder during the previous twelve (12) month period. Trade secret or patent information developed due to hemp research may be omitted from the annual research plan so long as there is a necessity for the research institution to protect such 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.

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Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
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# TITLE 16. ECONOMIC REGULATION

## PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

## CHAPTER 31. ADMINISTRATION

### 16 TAC §31.6

The Texas Alcoholic Beverage Commission proposes new 16 TAC §31.6, relating to Establishment of Advisory Committees.

In its 2018-2019 review of the Alcoholic Beverage Commission, the Sunset Advisory Commission adopted Recommendations 1.5 and 1.6, which directed the agency to establish advisory committees by rule to provide expertise to the commission for various issues. In House Bill 1545, the Texas Legislature created §5.21 of the Alcoholic Beverage Code (Code), which authorizes the Commission to create advisory committees by rule.

Proposed §31.6 creates requirements for subsequent rules that will establish the actual advisory committees. For instance, no advisory committee shall have more than nine members. The Commission believes that this is a manageable number that will allow for an adequately diverse membership.

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the commission will have access to additional input and expertise on various issues under its jurisdiction.

Proposed §31.6 will have no fiscal or regulatory impact on rural communities. There will be no effect on micro-businesses, small businesses, and persons regulated by the commission. The proposed rule does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency. The proposed rule does not create a new regulation. The proposed rule does not expand, limit, or repeal an existing regulation. The proposed rule does not have a direct effect on the state's economy, either positively or adversely.

Ms. Horton has determined that for each year of the first five years that the proposed rule will be in effect, there will be no fiscal impact on state or local government attributable to the rule.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage

Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on Friday, January 3, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed rule is authorized by Alcoholic Beverage Code §5.21, which authorizes the commission to adopt rules to establish advisory committees.

This rule implements Alcoholic Beverage Code §5.21.

*§31.6. Establishment of Advisory Committees.*

(a) This rule implements Alcoholic Beverage Code §5.21, which authorizes the commission, by rule, to establish advisory committees as necessary to accomplish the purposes of the Alcoholic Beverage Code, and to meet the changing needs of the agency. Government Code Chapter 2110 applies to an advisory committee created by the commission.

(b) The commission rule establishing an advisory committee shall contain, at a minimum, the following information:

(1) the purpose, role, and goal of the committee;

(2) composition and representation requirements;

(3) qualifications of the members, such as experience or geographic location;

(4) terms of service of committee members;

(5) any necessary training requirements; and

(6) the method the agency will use to receive public input on issues considered by the advisory committees.

(c) An advisory committee created by the commission shall not have more than nine members.

(d) The presiding officer of the commission shall appoint the members of an advisory committee.

(e) Each advisory committee shall hold at least one open meeting per fiscal year. Meetings at which a quorum is present are subject to the Texas Open Meetings Act (Tex. Gov't Code Ch. 551).

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-201904499
Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 206-3280

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# CHAPTER 35. ENFORCEMENT

## SUBCHAPTER F. INSPECTIONS

### 16 TAC §35.50

The Texas Alcoholic Beverage Commission proposes new Rule 16 TAC §35.50, relating to Inspections, to implement Alcoholic Beverage Code ("Code") §5.361(a-2)(2).

Section 12 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019) amended §5.361 of the Code by adding subsections §§5.361(a-1) and 5.361(a-2) effective September 1, 2019. Subsection (a-2)(2) requires that the commission's inspection plan provide for physical inspection of the premises of each permittee and licensee within a reasonable time, as set by commission rule. Based upon commission resources and the number of permitted and licensed premises in the state, the proposed commission rule requires the commission to physically inspect each premises at least once every eight years.

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the rule furthers the Code's requirement of implementing a risk-based approach to inspecting licensed and permitted businesses.

The proposed rule will have no fiscal or regulatory impact on rural communities. There will be no effect on micro-businesses, small businesses, and persons regulated by the commission. The proposed rule does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

Ms. Horton has determined that for each year of the first five years that the proposed rule will be in effect there will be no fiscal impact on state or local government attributable to the rule.

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency. The proposed rule does not create a new regulation, nor does it expand, limit, or repeal an existing regulation. The proposed rule does not have a direct effect on the state's economy, either positively or adversely.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on Friday, January 3, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed new rule is authorized by Texas Alcoholic Beverage Code §5.361(a-2)(2), which requires the commission to physically inspect the premises of each permittee and licensee within a reasonable time as set by rule.

This new rule implements Alcoholic Beverage Code §5.361(a-2)(2).

*§35.50. Physical Inspection of Licensed and Permitted Premises.*

(a) This section implements Alcoholic Beverage Code §5.361(a-2)(2).

(b) Notwithstanding §35.51(d), the commission will physically inspect each in-state licensed or permitted premises at least once every eight (8) years.

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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Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3451

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**16 TAC §35.51**

The Texas Alcoholic Beverage Commission proposes new Rule 16 TAC §35.51, relating to Inspections, to implement Alcoholic Beverage Code ("Code") §§5.361(a-1) and 5.361(a-2)(1).

Section 12 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019) amended §5.361 of the Code by adding §§5.361(a-1) and 5.361(a-2)(1) effective September 1, 2019. Subsection (a-1) requires the commission to develop by rule a plan for inspecting permittees and licensees using a risk-based approach that prioritizes public safety. Subsection (a-2) provides the requirements for that inspection plan.

Proposed §35.51 requires that the commission classify each permitted or licensed business as either priority or non-priority for inspection purposes. It also identifies the factors that the commission can consider when making that classification. The rule requires that the commission inspect priority locations at least every six months, and non-priority locations on an as-needed basis. Finally, the rule provides that the commission may conduct its inspections either in person or virtually (newly-adopted Rule §41.22 authorizes the commission to conduct virtual inspections via a digital application that it makes available to the public).

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rule will be in effect, the public will benefit because the rule furthers the Code's requirement of implementing a risk-based approach to inspecting licensed and permitted businesses.

The proposed rule will have no fiscal or regulatory impact on rural communities. There will be no effect on micro-businesses, small businesses, and persons regulated by the commission. The proposed rule does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission because all in-state permitted or licensed businesses are already subject to inspections by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency. The proposed rule does not create a new regulation, nor does it expand, limit, or repeal an existing regulation. The proposed rule does not have a direct effect on the state's economy, either positively or adversely.

Ms. Horton has determined that for each year of the first five years that the proposed rule will be in effect there will be no fiscal impact on state or local government attributable to the rule.

Comments on the proposed rule may be submitted in writing to Shana Horton, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on Friday, January 3, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed addition is authorized by Tex. Alco. Bev. Code §§5.361(a-1) and 5.361(a-2), which require the commission to develop by rule a plan for inspecting permittees and licensees using a risk-based approach that prioritizes public safety and provide the requirements for that inspection plan.

This new rule implements Alcoholic Beverage Code §§5.361(a-1) and 5.361(a-2)(1).

*§35.51. Risk-Based Inspection of Licensed and Permitted Premises.*

(a) This rule implements Alcoholic Beverage Code §§5.361(a-1) and 5.361(a-2)(1), which require the commission to develop by rule a plan for inspecting permittees and licensees using a risk-based approach that prioritizes public safety.

(b) The commission will classify each licensed or permitted premises as priority or non-priority, for inspection purposes. In classifying a premises, the commission may consider factors including, but not limited to:

(1) the type of permit or license held;

(2) the location of the permittee's or licensee's premises;

(3) previous public safety violations committed by the premises;

(4) any breaches of the peace occurring at the permittee's or licensee's premises;

(5) the permittee's or licensee's record of compliance with the Alcoholic Beverage Code and these rules;

(6) any public safety-related complaints received by the commission against the premises;

(7) whether the premises has regularly completed and submitted the report required by §41.22, Compliance Reporting by License and Permit Holders of this title; and

(8) whether the premises is a "priority location" for enforcement purposes under Subsection (c) of this section.

(c) For purposes of this section, a premises is a "priority location" if:

(1) any public safety-related violations have occurred on the premises during the past six months;

(2) the commission is currently investigation any allegations of public safety violations at the premises;

(3) the premises has been licensed for less than two years for off-premises consumption, and has not been the target of any underage compliance operation or other public safety operation; or

(4) the premises has been licensed for less than two years for on-premises consumption, holds a late hours permit or license, and has not been the target of an underage compliance operation or other public safety operation.

(d) The commission will inspect a permitted or licensed premises classified as:

(1) priority not less than once every six months; or

(2) non-priority on an as-needed basis.

(e) Inspections under this section may be virtual, physical, or a combination of both.

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 November 2, 2019.

TRD-201904526
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 206-3451

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## CHAPTER 41. AUDITING
## SUBCHAPTER B. EXPORTS OF LIQUOR

### 16 TAC §41.18

The Texas Alcoholic Beverage Commission proposes new 16 TAC §41.18, relating to Providing Retailer Samples: Distiller's and Rectifier's Permit.

In House Bill 1997, 86th Reg. Tex. Leg. Session (2019), the Texas Legislature created §14.07 of the Alcoholic Beverage Code (Code), which authorizes the holder of a Distiller's and Rectifier's Permit or the agent or employee of the holder of a Distiller's and Rectifier's Permit to: (1) provide a sample of distilled spirits to the holder of a retail permit authorizing the sale of distilled spirits or an agent or employee of the holder of the retail permit; or (2) provide a distilled spirits product tasting on the retailer's premises for the holder of the retail permit or an agent or employee of the holder of the retail permit.

Proposed §41.18 establishes the authorization provided by the statute within the commission's rules, provides that samples taken from inventory are considered "first sale" for taxation purposes, and specifies that excise taxes must be paid by the holder of the Distiller's and Rectifier's Permit not later than the 15th day of the month following the month in which occurs the "first sale."

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the holders of Distiller's and Rectifier's Permits will be able to provide samples to retailers, which will lead to increased informed consumer choice of products.

The proposed rule will have no fiscal or regulatory impact on rural communities. The proposed new rule merely implements new Code §14.07, as prescribed by the Texas Legislature in House Bill 1997, and does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission. The effect on micro-businesses, small businesses, and persons regulated by the commission will be minimal in that it provides certain permit holders increased authorization to perform a discretionary action. Because provision of samples under the proposed rule is discretionary, the proposed rule does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency. The proposed rule does not create a new regulation. The proposed rule does not expand, limit, or repeal an existing regulation.

Ms. Horton has determined that for each year of the first five years that the proposed rule will be in effect it may result in a minimal positive fiscal impact on state or local government with the collection of excise taxes on product used for retailer sampling.

Comments on the proposed rule may be submitted in writing to Shana Horton, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on Friday, January 3, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed rule is authorized by Alcoholic Beverage Code §14.07, which authorizes the holder of a Distiller's and Rectifier's Permit or the agent or employee of the holder of a Distiller's and Rectifier's Permit to: (1) provide a sample of distilled spirits to the holder of a retail permit authorizing the sale of distilled spirits or an agent or employee of the holder of the retail permit; or (2) provide a distilled spirits product tasting on the retailer's premises for the holder of the retail permit or an agent or employee of the holder of the retail permit; and by Alcoholic Beverage Code §5.31, which provides the commission with general authority to adopt rules necessary to carry out the provisions of the Code.

This rule implements Alcoholic Beverage Code §14.07.

*§41.18. Providing Retailer Samples: Distiller's and Rectifier's Permit.*

(a) This section implements Alcoholic Beverage Code §14.07.

(b) A holder of a Distiller's and Rectifier's Permit may provide samples obtained from the distiller's inventory to a retailer in accordance with Alcoholic Beverage Code §14.07.

(c) Samples taken from the distiller's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The holder of the Distiller's and Rectifier's Permit shall remit excise taxes for samples taken from inventory not later than the 15th day of the month following the month in which occurs the "first sale."

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 November 26, 2019.

TRD-201904501
Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 206-3280

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**16 TAC §41.19**

The Texas Alcoholic Beverage Commission proposes new Rule 16 TAC §41.19, relating to Providing Retailer Samples: Non-Resident Seller.

In House Bill 1997, 86th Reg. Tex. Leg. Session (2019), the Texas Legislature amended §37.01 of the Alcoholic Beverage Code (Code), which authorizes the holder of a Non-Resident Seller's Permit or agent or employee of the permit holder, in the same manner as authorized under Code §14.07 for the holder of a Distiller's and Rectifier's Permit or an agent or employee, to : (1) provide a sample of distilled spirits to the holder of a retail permit authorizing the sale of distilled spirits or an agent or employee of the holder of the retail permit; or (2) provide a distilled spirits product tasting on the retailer's premises for the holder of the retail permit or an agent or employee of the holder of the retail permit.

Proposed §41.19 establishes the authorization provided by the statute within the commission's rules and provides that samples must be purchased by the Non-Resident Seller from either the holder of a package store permit or a wholesaler. Further, it specifies that samples purchased from a wholesaler's inventory are considered "first sale" for taxation purposes and excise taxes must be paid by the wholesaler not later than the 15th day of the month following the month in which occurs the "first sale."

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the holders of Non-Resident Seller's Permits will be able to provide samples to retailers, which will lead to increased informed consumer choice of products.

The proposed rule will have no fiscal or regulatory impact on rural communities. The proposed new rule merely implements new Alcoholic Beverage Code §37.01, as prescribed by the Texas Legislature in House Bill 1997, and does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission. The effect on micro-businesses, small businesses, and persons regulated by the commission will be minimal in that it provides certain permit holders increased authorization to perform a discretionary action. Because provision of samples under the proposed rule is discretionary, the proposed rule does not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency. The proposed rule does not create a new regulation. The proposed rule does not expand, limit, or repeal an existing regulation.

Ms. Horton has determined that for each year of the first five years that the proposed rule will be in effect, it may result in a minimal positive fiscal impact on state or local government with the collection of excise taxes on product used for retailer sampling.

Comments on the proposed rule may be submitted in writing to Shana Horton, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3280, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed rule on Friday, January 3, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed rule is authorized by Alcoholic Beverage Code §37.01, which authorizes the holder of a Non-Resident Seller's Permit or the agent or employee of the holder of a Non-Resident Seller's Permit to: (1) provide a sample of distilled spirits to the holder of a retail permit authorizing the sale of distilled spirits or an agent or employee of the holder of the retail permit; or (2) provide a distilled spirits product tasting on the retailer's premises for the holder of the retail permit or an agent or employee of the holder of the retail permit; and by Alcoholic Beverage Code §5.31, which provides the commission with general authority to adopt rules necessary to carry out the provisions of the Code.

This rule implements Alcoholic Beverage Code §37.01(d).

*§41.19. Providing Retailer Samples: Non-Resident Seller.*

(a) This section implements Alcoholic Beverage Code §37.01(d).

(b) A non-resident seller shall purchase samples to be provided to a retailer in accordance with Alcoholic Beverage Code §37.01(d) from:

(1) a holder of a package store permit; or

(2) a holder of a wholesaler permit.

(c) Samples purchased by a nonresident seller from a wholesaler's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The wholesaler shall remit excise taxes for samples purchased not later than the 15th day of the month following the month in which occurs the "first sale."

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 November 26, 2019.

TRD-201904502
Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 206-3208

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# TITLE 22. EXAMINING BOARDS

## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

**22 TAC §531.18**

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct. The proposed amendment to §531.18 and the form adopted by reference was recommended by the Real Estate Inspector Committee. The proposed amendment to the Consumer Protection Notice adds a statement to alert consumers that inspectors licensed by TREC are required to maintain errors and omissions insurance to cover losses arising from the performance of a real estate inspection in a negligent or incompetent manner. Real estate license holders are required to post this notice at their place of business and on their website.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater consumer protection.

For each year of the first five years the proposed amendments are in effect the amendments will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

*§531.18. Consumer Information.*

(a) The Commission adopts by reference the Consumer Protection Notice TREC No. CN 1-3 [~~CN 1-2~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on November 22, 2019.

TRD-201904454
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-3177

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### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

**22 TAC §535.154**

The Texas Real Estate Commission (TREC) proposes an amendment to 22 TAC §535.154, Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements, in Chapter 535, General Provisions. The proposed amendment to §535.154 removes an unnecessary word that

was inadvertently left in the text during the last substantive change to the rule.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules.

For each year of the first five years the proposed amendment is in effect the amendment will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation;

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

*§535.154. Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements.*

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

(c) Team names:

(1) A team name may not include any terms that could mislead the public to believe [~~think~~] that the team is offering brokerage services independent from its sponsoring broker.

(2) A team name must end with the word "team" or "group".

(3) Before an associated broker or a sales agent sponsored by a broker starts using a team name in an advertisement, the broker must register the name with the Commission on a form approved by the Commission.

(4) A broker must notify the Commission in writing not later than the 10th day after the date the associated broker or a sales agent sponsored by the broker stops using a team name.

(d) (No change.)

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

Filed with the Office of the Secretary of State on November 22, 2019.

TRD-201904455
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-3177

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## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.216

The Texas Real Estate Commission (TREC) proposes amendments to §535.216, Renewal of License, in Subchapter R of Chapter 535, General Provisions. The proposed amendments implement statutory changes enacted by the 86th Legislature in SB 37 eliminating consideration of student loan defaults when deciding whether to grant an occupational license and SB 624 authorizing the Commission to deny license renewal if a license holder is in violation of a Commission order. The proposed amendments also reorganize this section to improve readability and increase transparency for license holders and members of the public. The Texas Real Estate Inspector Committee recommends these proposed amendments.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments and new rule. Specifically, while the reduction in required hours in coursework may affect education provider businesses, a recent change in rule to reduce some class sizes may offset this potential impact to providers. In addition, the lower overall hour requirement could attract more students to take inspector licensure courses. As such, no adverse economic effect is anticipated.

There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments and new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of the changes is increased efficiency,

improved clarity and a simplified licensing process without redundancies that existed previously for license holders and seekers.

For each year of the first five years the proposed amendments and new rule are in effect the amendments will not:

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

*§535.216. Renewal of License.*

(a) Renewal application.

(1) A license issued by the Commission under Chapter 1102, Occupations Code, expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) pay the appropriate fee as required by §535.210 of this title;

(C) comply with the fingerprinting requirements of Chapter 1102, Occupations Code;

(D) satisfy the applicable continuing education requirements of Chapter 1102, Occupations Code, and this subchapter; and

(E) provide proof of financial responsibility as required in Chapter 1102, Occupations Code, on a form approved by the Commission.

(3) An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status.

(b) Renewal Notice.

(1) The Commission will send a renewal notice to each license holder at least 90 days before the license expiration date.

(2) If a license holder intends to renew a license, failure to receive a renewal notice does not relieve the license holder from responsibility of applying for renewal as required in this section.

(c) Request for information.

(1) The Commission may request a license holder to provide additional information to the Commission in connection with a renewal application.

(2) A license holder must provide the information requested by the Commission within 30 days after the date of the Commission's request.

(3) Failure to provide the information requested within the required time is grounds for disciplinary action under Chapter 1102, Occupations Code.

(d) Renewal on inactive status.

(1) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status.

(2) Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status, but must satisfy continuing education requirements before returning to active status.

(e) Late Renewal.

(1) If a license has been expired for less than six months, a license holder may renew the license by:

(A) filing a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) paying the appropriate late renewal fee as required by §535.210 of this title (related to Fees);

(C) satisfying the applicable continuing education requirements; and

(D) providing proof of financial responsibility on a form approved by the Commission.

(2) To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice and Inspector Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same inspector may be the sponsor for both periods. The Commission will renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.

(f) License Reinstatement.

(1) If a license has been expired for six months or more, a license holder may not renew the license, and must file an original application to reinstate the license and satisfy all requirements for licensure, except as provided in paragraph (3) of this subsection.

(2) A license holder may not continue to practice until the new license is received.

(3) If an applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.

(g) Denial of Renewal or Reinstatement. The Commission may deny an application for license renewal or reinstatement if a license holder is in violation of the terms of a Commission order.

~~[(a) A person licensed by the Commission under Chapter 1102 may renew the license by timely filing the prescribed application for renewal, complying with the fingerprinting and TGSLC requirements in §535.95 of this title, paying the appropriate fee to the Commission and satisfying applicable continuing education requirements as required by Chapter 1102 and this subchapter, and providing to the Commission proof of financial responsibility as required by Chapter 1102 using a form approved by the Commission for that purpose.]~~

~~[(b) A license holder also may renew an unexpired license by accessing the Commission's website, entering the required information on the renewal application form, satisfying applicable education and professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 requirements and paying the appropriate fee in accordance with the instructions provided at the site by the Commission.]~~

~~[(c) The Commission shall send a renewal notice to each license holder at least 90 days prior to the expiration of the license. An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status. It is the responsibility of the license holder to apply for renewal, and failure to receive a renewal notice does not relieve the license holder of the responsibility of applying for renewal.]~~

~~[(d) A license holder shall provide information requested by the Commission in connection with an application to renew a license within 30 days after the Commission requests the information. Failure to provide information requested by the Commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act.]~~

~~[(e) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status but must satisfy continuing education requirements before returning to active status.]~~

~~[(f) If the license has been expired for less than six months, the license holder may renew the license by filing the prescribed application for renewal, paying the appropriate late renewal fee to the Commission and satisfying the applicable continuing education and proof of financial responsibility requirements.]~~

~~[(g) To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice and Inspector Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same inspector may be the sponsor for both periods. The Commission shall renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.]~~

~~[(h) If the license has been expired for six months or more, the licensee may not renew but must file an original application to reinstate the license and may not practice until the new license is received. If the applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.]~~

(h) [~~(i)~~] Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

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 November 22, 2019.

TRD-201904456
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-3177

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# CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

## 22 TAC §541.1

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §541.1, Criminal Offense Guidelines, in Chapter 541 Rules Relating to the Provisions of Texas Occupations Code, Chapter 53. The proposed amendment to §541.1 implements statutory changes enacted by the 86th Legislature in HB 1342 regarding the requirements for evaluating the criminal history of licensed applicants and license holders.

After considering the factors identified by the Legislature in HB 1342, the proposed amendments revise the list of criminal offenses considered directly related to the duties and responsibilities of the licensed occupations under the jurisdiction of TREC.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be removing barriers to receiving a license when appropriate.

For each year of the first five years the proposed amendments are in effect the amendments will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--increase or decrease the number of individuals subject to the rule's applicability; or

--positively or adversely affect the state's economy.

For each year of the first five years the proposed amendments are in effect the amendments will, however, limit existing regulation by removing barriers from entry into the profession by those with certain criminal history.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

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

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

*§541.1. Criminal Offense Guidelines.*

(a) For the purposes of Chapter 53, Texas Occupations Code, [~~Chapter 53, §§1101.354, 1102.107, 1102.108, 1102.109, and §535.400(f) of this title,~~] the Texas Real Estate Commission considers that a deferred adjudication deemed a conviction under §53.021 or a conviction of the following criminal offenses directly relates [~~relate~~] to the duties and responsibilities of a real estate broker and real estate sales agent because committing these [~~, real estate salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector for the reason that the commission of the~~] offenses tends to demonstrate a [~~the~~] person's inability to represent the interest of another with honesty, trustworthiness, and integrity:

(1) offenses involving fraud or misrepresentation;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) offenses against real or personal property belonging to another;

(5) offenses against the person;

(6) offenses against public administration;

(7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(8) offenses involving moral turpitude;

(9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);

(10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;

(11) felonies involving the manufacture, delivery, or intent to deliver controlled substances;

(12) offenses of attempting or conspiring to commit any of the foregoing offenses;

(13) offenses involving aiding and abetting the commission of an offense listed in this section;

(14) repeated violations of one criminal statute or multiple violations of different criminal statutes; and

(15) felonies involving driving while intoxicated (DWI) or driving under the influence (DUI). [~~; and~~]

(b) For the purposes of Chapter 53, Texas Occupations Code, the Texas Real Estate Commission considers that a deferred adjudication deemed a conviction under §53.021 or a conviction of the following criminal offenses, directly relate to the duties and responsibilities of a professional inspector, real estate inspector, apprentice inspector and easement or right-of-way agent for the reason that the commission of the offenses tends to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness, and integrity:

(1) offenses involving fraud or misrepresentation;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) offenses against real or personal property belonging to another;

(5) offenses against the person;

(6) offenses against public administration;

(7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(8) offenses involving moral turpitude;

(9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);

(10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;

(11) felonies involving the manufacture, delivery, or intent to deliver controlled substances;

(12) offenses of attempting or conspiring to commit any of the foregoing offenses;

(13) offenses involving aiding and abetting the commission of an offense listed in this section; and

(14) repeated violations of one criminal statute or multiple violations of different criminal statutes.

(c) [~~(b)~~] In determining whether a criminal offense not listed in subsections (a) and (b) [~~subsection (a)~~] of this section is directly related to an occupation regulated by the Commission, the Commission shall consider:

(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 occupation;

(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, 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.

(d) [(c)] When determining a person's present fitness for a license, the Commission shall also consider [the following evidence]:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the offense;

(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 following the criminal activity;

(5) the person's compliance with the court-ordered terms and conditions while on parole, supervised release, probation, or community supervision;

(6) the time remaining, if any, on the person's term of parole, supervised release, probation, or community supervision;

(7) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(8) other evidence of the person's present fitness, including letters of recommendation [from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person].

[(d) It is the responsibility of the applicant to provide to the Commission:]

[(1) the recommendations of prosecution, law enforcement, and correctional authorities;]

[(2) signed letters of character reference from persons in the applicant's business or professional community which confirm that the writer knows about the applicant's prior criminal conduct;]

[(3) proof in such form as may be required by the Commission that he or she has maintained a record of steady employment;]

[(4) proof that the applicant has supported his or her dependents, if any;]

[(5) proof that the applicant has maintained a record of good conduct;]

[(6) proof that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases; and]

[(7) if the applicant submits a letter of character reference from a prospective sponsor, the letter must confirm that the writer knows about the applicant's prior criminal conduct.]

(e) It is the applicant's or license holder's responsibility to obtain and provide the recommendations described in subsection (d)(8) of this section.

(f) When determining a person's fitness to perform the duties and discharge the responsibilities of a licensed occupation regulated by the Commission, the Commission does not consider an arrest that did not result in a conviction or placement on deferred adjudication community supervision.

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 November 22, 2019.

TRD-201904457
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-3177

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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### CHAPTER 39. PUBLIC NOTICE

### SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

**30 TAC §39.651**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §39.651.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking implements House Bill (HB) 720, 86th Texas Legislature, 2019, addressing the commission's regulation of aquifer recharge (AR) projects in Texas. HB 720 added Texas Water Code (TWC), §27.203(c). Texas Water Code, §27.203(c) requires applicants for AR individual permits to provide notice to any groundwater conservation district in which the AR project will be located and publish notice in a newspaper of general circulation in the county in which the wells will be located.

Chapter 39 does not currently contain notice requirements for AR projects. Section 39.651(h) contains similar notice requirements for aquifer storage and recovery projects, therefore, the proposed amendment adds AR projects to this rule.

In addition, on June 12, 2019, the commission determined that certain rules in Chapter 39 (Non-Rule Project Number 2019-013-039-LS) are obsolete and no longer needed (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission has proposed to repeal obsolete rules in Chapter 39 (Rule Project Number 2019-119-039-LS) and to update other rules, primarily to remove obsolete text and update cross-references (Rule Project Number 2019-121-033-LS). The proposed amendment of §39.651(e) is included in this proposed rulemaking due to the necessary amendment of §39.651(h).

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 281, Applications Processing; Chapter 295, Water Rights, Procedural; Chapter 297, Water Rights, Substantive; and Chapter 331, Underground Injection Control.

Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections and correct uses of references. These changes are non-substantive and are not specifically discussed in this preamble.

*§39.651, Public Notice of Injection Well and Other Specific Applications*

As a result of the quadrennial review, the commission proposes to amend §39.651, by removing obsolete text in §39.651(e)(1) and (2) regarding the requirement for a public meeting for an application for a new hazardous waste facility, or for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit because no applications filed before September 1, 2005 remain pending with the commission.

To implement HB 702, the commission proposes to amend §39.651(h), so that the notice requirements for individual Class V permit applications for aquifer storage and recovery projects also apply to individual Class V permit applications for AR projects.

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 addresses necessary changes in order to comply state law, specifically HB 720. The proposed rulemaking would amend §39.651(e) to remove obsolete text and amend §39.651(h) to state that notice requirements for individual Class V permit applications for aquifer storage and recovery projects also apply to individual Class V permit applications for AR projects.

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 compliance with state law, and improved readability and minimized confusion with regard to applicable rules.

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, members of the public will not experience any significant fiscal impact. Any person who applies for an AR individual permit will be required to provide notice to any groundwater conservation district in which the AR project is located and will be required to publish notice in a newspaper of general circulation in the county in which the wells are located. The agency anticipates that the fiscal implications for businesses and individuals will be minimal because applicants will be able to utilize the authorization by rule option, which does not have newspaper publishing costs associated with it.

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.

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; however, it does have the potential to increase 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 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. A "Major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 720, which enacted requirements in TWC, Chapters 11 and 27, for aquifer storage projects and AR projects, and to remove obsolete text.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that there will be a significant cost to comply with the proposed rule because no new fees are proposed, therefore, the cost will not be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or

jobs. The proposed amendment removes obsolete text and establishes notice requirements consistent with the requirement of HB 720; therefore, will not adversely affect in a material way the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements for the following reasons: this rulemaking does not exceed any standard set by federal law for the commission's Underground Injection Control Program authorized for the State of Texas under the federal Safe Drinking Water Act; does not exceed any express requirement of state law because it is consistent with the requirements of HB 720; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government because it is consistent with the requirements of the commission's Underground Injection Control Program; and is not based solely under the general powers of the agency, but is based specifically under TWC, §27.019, Texas Health and Safety Code, §§361.0666, 361.0791, and 361.082; and HB 720, Section 4, as well as under the other authority of the commission cited in the statutory authority section of this preamble.

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

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed action implements legislative requirements in HB 720, for aquifer storage or AR projects.

The commission determined that the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule establishes public notice requirements consistent with the requirements of HB 720 for an AR project application and removes obsolete text. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden constitutionally, nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulation.

Therefore, the rule would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 7, 2020, 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 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 2019-116-297-OW. The comment period closes on January 21, 2020. 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 Carol Dye, Underground Injection Control Permits Section, at (512) 239-1504.

Statutory Authority

This amendment is proposed under the authority of Texas Water Code (TWC), Chapter 5, Subchapter M, which establishes environmental permitting procedural requirements; TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.003, which allows the commission to use all reasonable methods to implement its policy of maintaining the quality of fresh water in the state of Texas; TWC, §27.011, which establishes the commission's jurisdiction over certain injection well permits; TWC, §27.019, which specifically authorizes the commission to adopt rules and procedures necessary for performance of its powers, duties, and functions under TWC, Chapter 27; Texas Health and Safety Code (THSC), §361.017, which establishes the commission's jurisdiction over all aspects of the management of hazardous waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.0666, which establishes public meeting and notice requirements for solid waste facilities; THSC, §361.0791, which establishes public meetings and notice requirements for new hazardous waste management facilities; THSC, §361.082, which establishes notice and hearing requirements for hazardous waste permit applications; Texas Government Code, §2001.004, which requires state agencies

to adopt procedural rules; and House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158, and TWC, Chapter 27, Subchapter H.

The proposed amendment implements TWC, Chapter 5, Subchapter M; THSC, §§361.0666, 361.0791, and 361.082; and HB 720.

*§39.651. Application for Injection Well Permit.*

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant 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. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On 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, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). 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).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For Notice of Receipt of Application and Intent to Obtain a Permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) 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; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a 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.

(6) For Class I underground injection wells, 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) and the notice must appear in the section of the newspaper containing state or local news items.

(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 under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. 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 proposed 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) For Class I underground injection wells, 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) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) 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; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste, Class III, or Class V injection well permit 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 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.

(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 on the application if a person affected files with the chief clerk a request for a public meeting concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; 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 on 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 in 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 in 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' 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) 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 this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting 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).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case 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 (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, 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) For Class I underground injection wells, 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) and the notice must appear in the section of the newspaper containing state or local news items.

(C) 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). The notice must appear in the section of the newspaper containing state or local news items. 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) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

*(i)* persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

*(ii)* landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

*(iii)* persons who own mineral rights underlying the existing or proposed injection well facility;

*(iv)* 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; and

*(v)* any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, 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 contested case 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.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

(h) Applications for individual Class V injection well permits for aquifer storage and recovery (ASR) projects and aquifer recharge (AR) projects. Notwithstanding the requirements of subsections (c) and (d) of this section, this subsection establishes the public notice requirements for [~~an application for~~] an individual Class V injection well permit application for either an ASR project or an AR project. Issuance of the Notice of Receipt of Application and Intent to Obtain a Permit is not required for [~~an application for~~] an individual Class V injection well permit application for an ASR project or an AR project. The notice required by §39.419 of this title must be published by the applicant once in a newspaper of general circulation in the county in which the injection well will be located after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. The chief clerk shall provide notice by first class mail to any groundwater conservation district in which the wells associated with the ASR project or AR project will be located. The chief clerk shall also mail notice to the persons listed in §39.413(7) - (9) of this title. This notice must contain the text as required by §39.411(c)(1) - (6) 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 November 22, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 293-1806

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# CHAPTER 101. GENERAL AIR QUALITY RULES

## SUBCHAPTER J. EXPEDITED PERMITTING

### 30 TAC §101.601

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §101.601.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB or bill) 698, 86th Texas Legislature, 2019, amended the Texas Health and Safety Code (THSC), Chapter 382, Texas Clean Air Act, allowing TCEQ to cover the costs of utilizing full-time equivalent employees to process expedited permits. The bill specifies that the money collected from the surcharge may be used to support processing air permits under the expedited program. The bill also clarifies that the commission is allowed to set the rate for overtime compensation for full-time equivalent employees supporting the expedited processing of air permit projects.

Processing air permits through the expedited program would continue to apply to projects filed under 30 TAC Chapters 106, 116, or 122. Applicants are still required to comply with all applicable federal and state requirements, including existing public notice requirements. In addition, when public notice is required, and an applicant pays a surcharge for expedited processing of their air permit, the published public notice must indicate that the application is being processed in an expedited manner.

Section Discussion

*§101.601, Surcharge*

The commission proposes to amend §101.601(a) to allow the costs incurred for full-time equivalent commission employees expediting an application as an expense that may be fully funded with the surcharge collected for the expedited processing of an air permit 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 rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

This rulemaking addresses necessary changes in order to maintain consistency with state law. The proposed rule clarifies that the agency is allowed to use the expedited air permit surcharge revenue from an applicant to cover expenses incurred in the processing of that application, including all costs associated with full-time employees.

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 would be compliance with state law and a probable decrease in the processing times for expedited air permits.

The proposed rulemaking is not anticipated to result in any change to significant fiscal implications for businesses or individuals that utilize the optional expedited air permit application process.

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.

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 maintain consistency with state law.

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 would 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 proposed rulemaking in light of the Draft Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, it would not be subject to the requirements to prepare a Regulatory Impact Analysis (RIA).

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendment allows the commission to pay the costs associated with full-time equivalent employees with the surcharge collected for the expedited processing of an air permit application. Therefore, the proposed amendment would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, an RIA is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not proposed solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by SB 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct an RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. Any impact the proposed rule may have is no greater than is necessary or appropriate to meet the requirements of the Federal Clean Air Act and, in fact, creates no additional impacts since the proposed rule does not exceed the requirement to attain and maintain the National Air Ambient Quality Standards. For these reasons, the proposed rule falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the

laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *(Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Berry v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000, no writ); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedures Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The purpose of the proposed amendment is to allow the commission to pay full-time equivalent commission employees with the surcharge collected for the expedited processing of an air permit application. The proposed amendment is not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382, and the Texas Water Code, which are cited in the Statutory Authority sections of this preamble. Therefore, this proposed rulemaking action 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

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect with the market value of the property as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to allow the commission to pay full-time equivalent commission employees with the surcharge collected for the expedited processing of an air permit application. The proposed rulemaking would not create any additional burden on private real property. The proposed rulemaking would not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also would not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking would not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the 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 (CMP), and will, therefore, require that the 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 administrative in nature and would 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

Applicants with a Federal Operating Permit permitted under 30 TAC Chapter 122 may request expedited processing of their applications. Applicants must still comply with all applicable federal and state requirements, including public notice requirements and the United States Environmental Protection Agency review period. These requirements will continue to include the opportunity to submit comments, and request a public meeting and a notice and comment hearing. In addition, the applicant must indicate on the public notice that the application is being processed in an expedited manner.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 7, 2020, 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 2019-127-101-AI. The comment pe-

riod closes on January 21, 2020. 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 Sherry Davis, Air Permits Division, at (512) 239-2141.

Statutory Authority

The rule 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 any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; concerning Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; THSC, §382.05195, concerning standard permits, which allows the commission to issue a standard permit for new or existing similar facilities; THSC, §382.01596, concerning permits by rule, which allows the commission to adopt permits by rule for certain types of facilities; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications; and THSC, §382.0561, concerning Federal Operating Permit: Hearing, which allows the commission to issue, revise, reopen, or renew a federal operating permit.

The proposed rule would implement Senate Bill 698, 86th Texas Legislature, 2019; and THSC, §§382.051, 382.0513, 382.0515, 382.0518, 382.05195, 382.05196, 382.056, and 382.0561.

*§101.601. Surcharge.*

(a) The executive director may add a surcharge for an expedited application filed under Chapter 106, 116, or 122 of this title (relating to Permits by Rule; Control of Air Pollution by Permits for New Construction or Modification; and Federal Operating Permits Program, respectively) in an amount sufficient to cover the expenses incurred by expediting it, including overtime, full-time equivalent commission employees, contract labor, and other costs.

(b) Any surcharge will be remitted in the form of a check, certified check, electronic funds transfer, or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or TCEQ and delivered with the application to the TCEQ, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. Applications filed under Chapter 106, 116, or 122 of this title as described in this subchapter will not be considered for expedited processing until the surcharge is received.

(c) If the cost of processing an expedited application under this subchapter exceeds the collected surcharge amount, the executive director may assess and collect additional surcharge(s) from the applicant to cover the additional costs of expediting the permit. The executive director will not grant final approval under Chapter 106, 116, or 122 of this title if an outstanding surcharge amount is due.

(d) The executive director may refund any unused portion of the surcharge.

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 November 22, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 293-1806

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# CHAPTER 281. APPLICATIONS PROCESSING
## SUBCHAPTER A. APPLICATIONS PROCESSING

### 30 TAC §281.19

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §281.19.

Background and Summary of the Factual Basis for the Proposed Rule

In 2019, the 86th Texas Legislature passed House Bill (HB) 720. HB 720 added Texas Water Code (TWC), §11.157, related to new appropriations of water for aquifer storage and recovery (ASR) and aquifer recharge (AR) projects. Under TWC, §11.157(f), the commission has 180 days to complete technical review of applications for new appropriations of water for ASR and AR. The commission must adopt rules implementing TWC, §11.157, by June 1, 2020.

This rulemaking implements the requirement in TWC, §11.157(f), for the commission to complete technical review for applications for new appropriations of water for ASR and AR projects in 180 days.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 39, Public Notice; Chapter 295, Water Rights, Procedural; Chapter 297, Water Rights, Substantive; and Chapter 331, Underground Injection Control, to implement HB 720.

Section Discussion

*§281.19, Technical Review*

The commission proposes to amend §281.19(a). Currently, §281.19(a), requires that technical review of a water rights application be completed within 75 working days after the initial review period. TWC, §11.157(f), provides for a 180-day technical review period for new appropriations of water for ASR and AR projects. Proposed §281.19(a) would require that technical review for new appropriations of water for ASR and AR projects be completed 180 days after the application is determined to be administratively complete. Additionally, the commission proposes to further amend §281.19(a) to remove obsolete language referring to 30 TAC §291.102 and §291.109, because it relates to areas that were transferred to the Public Utility Commission of Texas (applications for certificates of public convenience and necessity and applications for sale, transfer, or merger requests).

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 addresses necessary changes in order to comply with state law and implement the requirements in the TWC, §11.157(f), which require the commission to complete the technical review of applications for new appropriations of water for ASR and AR projects within 180 days.

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 compliance with state law, specifically HB 720, which relates to appropriations of water for recharge of aquifers or use in ASR projects.

The proposed rulemaking 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.

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 not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the 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. A "Major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 720, which enacted requirements in TWC, Chapters 11 and 27, for ASR and AR projects.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that there will be a significant cost to comply with the proposed rule because no new fees are proposed, therefore, the cost will not be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rule establishes a time period consistent with the requirements of HB 720 for technical review of applications for a new appropriation of water for an ASR project or AR project, therefore, will not adversely affect in a material way the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements for the following reasons: this rulemaking does not exceed any standard set by federal law because there are no

federal standards governing water rights; does not exceed any express requirement of state law because it is consistent with the requirements of HB 720; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government because there are no delegation agreements or contracts between the commission and the federal government for the commission's water rights program; and is not based solely under the general powers of the agency, but is based specifically under TWC, §27.019, and HB 720, Section 4, as well as, under the other authority of the commission cited in the statutory authority section of this preamble.

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

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed action implements legislative requirements in HB 720 for ASR or AR projects.

The commission determined that the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule establishes the time period consistent with the requirements of HB 720 for technical review of an application for a new appropriation of water for an ASR or AR project. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden constitutionally, nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulation.

Therefore, the rule would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program (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 January 7, 2020, 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 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 2019-116-297-OW. The comment period closes on January 21, 2020. 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 Kathy Ramirez, Water Availability Division, at (512) 239-6757.

Statutory Authority

This amendment is proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; and, House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158 and TWC, Chapter 27, Subchapter H.

The proposed amendment implements HB 720.

*§281.19. Technical Review.*

(a) After an application is determined by the executive director to be administratively complete, the executive director shall commence a technical review as necessary and appropriate. For purposes of these sections, the technical review period is that period of time beginning with the completion of the initial review period and will continue for a period of time not to exceed 75 working days. [~~In the case of applications filed under §291.102 of this title (relating to Criteria for Considering and Granting Certificates or Amendments), the technical review period is that period of time beginning 30 days after notice of the application has been given in accordance with §291.109 of this title (relating to Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction) and will continue for a period of time not to exceed 75 working days.~~] In the case of applications filed under §335.43 of this title (relating to Permit Required) or §331.7 of this title (relating to Permit Required), the technical review period shall commence upon assignment of the application to a staff member and continue for a period of time not to exceed 120 days. For applications filed under Chapter 336 of this title (relating to Radioactive Substance Rules) and subject to the Notice of Deficiency (NOD) process established in this section, the technical review period shall begin the day after the date of determination of administrative completeness and for issuance, renewal, or major amendments, shall continue for a period of time not to exceed 255 days; however, this time frame may be extended to a maximum of 600 days if an application is technically deficient; or, for applications

for minor amendments, shall continue for a period of time not to exceed 90 days; however, this time frame may be extended to a maximum of 150 days if an application is technically deficient. In the case of applications filed under Chapter 295 of this title (relating to Water Rights, Procedural) that request a new appropriation of water for aquifer storage and recovery or aquifer recharge projects, the technical review shall commence on the date the application is administratively complete and will continue for a period of time not to exceed 180 days.

(b) Except as provided in subsection (c) of this section, the applicant shall be promptly notified of any additional technical material as may be necessary for a complete review. If the applicant provides the information within the period of time prescribed by subsection (a) of this section, the executive director will complete processing of the application within the technical review period extended by the number of days required for the additional data. If the necessary additional information is not received by the executive director prior to expiration of the technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 30 days to provide the technical data before an application is returned. Decisions to return material to the applicant during the technical review stage will be made on a case by case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision instead of having the application returned.

(c) For applications for radioactive material licenses, the applicant shall be promptly notified of any additional technical information necessary to complete technical review. For new applications, renewal applications, or major amendment applications, the executive director shall complete application processing within the technical review period (600 days) if the applicant provides the information within 75 days of the date of the first NOD and 60 days of the subsequent NODs. For minor amendments, the applicant must provide the information within 20 days from the date of the first NOD and 20 days from the date of the second NOD. If the necessary additional information is not received by the executive director prior to the end of the response period, the executive director may return the application to the applicant. In no instance shall the executive director issue more than four NODs before returning the application. The applicant has the option of having the question of sufficiency of necessary technical information referred to the commission for a decision instead of having the application returned. The applicant may request additional time to respond to a notice of technical deficiency. The request must be in writing, set forth the reasons why the applicant cannot respond within the time provided and specify the amount of additional time requested. Any extension of time must be approved by the executive director in writing. The executive director may extend or delay the schedule for the processing of an application under this subsection to comply with the priority established by law for processing and review of radioactive material licenses.

(d) This subsection applies to the technical review of applications for radioactive material licenses submitted to the Texas Department of State Health Services on or before June 18, 2007. For new applications, renewal applications, or major amendment applications, the executive director shall complete application processing within the technical review period (600 days) if the applicant provides the information within 75 days of the date of the first NOD and 60 days of the second NOD. For minor amendments, the applicant must provide the information within 20 days from the date of the first NOD and 20 days from the date of the second NOD. If the necessary additional information is not received by the executive director prior to the end of the response period, the executive director may return the application to the applicant. In no instance shall the executive director issue more than two NODs before returning the application. The applicant has the option of having the question of sufficiency of necessary technical information referred to the commission for a decision instead of having the application returned. The applicant may request additional time to respond to a notice of technical deficiency. The request must be in writing, set forth the reasons why the applicant cannot respond within the time provided and specify the amount of additional time requested. Any extension of time must be approved by the executive director in writing. The executive director may extend or delay the schedule for the processing of an application under this subsection to comply with the priority established by law for processing and review of radioactive material licenses.

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 295. WATER RIGHTS, PROCEDURAL

## SUBCHAPTER C. NOTICE REQUIREMENTS FOR WATER RIGHTS APPLICATIONS

### 30 TAC §295.158

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §295.158.

Background and Summary of the Factual Basis for the Proposed Rule

In 2019, the 86th Texas Legislature passed House Bill (HB) 1964. HB 1964 streamlines the water rights permitting process for simple amendments to a water right that do not affect other water rights or the environment. The types of amendments covered by HB 1964 include changes to the purpose or place of use and small moves of diversion points. Amendments covered by HB 1964 will not be subject to notice and technical review.

The 86th Texas Legislature also passed HB 720, which removes permitting barriers for aquifer storage and recovery (ASR) and aquifer recharge (AR) projects for both new water rights and existing water rights. HB 720 adds recharge as a beneficial use of water and sets out a process for new appropriations for ASR and AR projects. These new appropriations are subject to notice and contested case hearings and TCEQ has 180 days to complete technical review of the application. HB 720 addresses amendments to existing water rights for reservoirs that have not been constructed or existing reservoirs that have lost storage capacity because of sedimentation. A water right holder with a water right authorizing storage that has not been constructed can remove the storage authorization without notice and hearing if other water rights and the environment are not affected by the amendment.

A water right holder can also request to remove the storage authorization and increase the amount of water to be diverted or the diversion rate, based on an evaporation credit, to increase the amount of water available for ASR. A water right holder can also amend their water right to replace storage capacity lost to sedimentation with an ASR project. These two types of amendments are subject to notice and contested case hearing.

This rulemaking implements changes to notice rules in Chapter 295 required by HB 1964 and HB 720.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 39, Public Notice; Chapter 281, Applications Processing; Chapter 297, Water Rights, Substantive; and Chapter 331, Underground Injection Control, to implement HB 720.

Section Discussion

§295.158, Notice of Amendments to Water Rights

The commission proposes to amend §295.158(b)(3), by adding the word "use" to correct a typographic error in the rule.

The commission proposes to add §295.158(b)(9), to implement Texas Water Code (TWC), §11.158(f). The commission is proposing that amendment applications to: a) increase the amount of water diverted or the diversion rate based on an evaporation credit, or b) to convert storage in a reservoir that has lost capacity due to sedimentation to an ASR project, be subject to full basin mailed and published notice.

The commission proposes to add §295.158(c)(2) to implement TWC, §11.122(b-3) which describes applications that are not subject to notice or technical review. The subsequent paragraph will be renumbered.

The commission proposes to delete renumbered §295.158(c)(3)(C) because this language is now obsolete due to the implementation of TWC, §11.122, as previously stated. Subsequent subparagraphs will be re-lettered.

The commission proposes to amend re-lettered §295.158(c)(3)(C) and (D) to clarify that some changes to the point of diversion in a water right are exempt from notice and technical review under proposed §295.158(c)(2)(C). The commission further proposes to amend re-lettered §295.158(c)(3)(C) and (D) to clarify that the provisions in these subparagraphs relating to interjacent notice apply to water right holders of record and that only existing water right holders of record receive notice of these applications.

The commission proposes to add §295.158(c)(3)(F) to implement the provisions of TWC, §11.158(e) by specifying that applications to amend a water right to remove an authorization for storage in a storage reservoir that has not been constructed may not require additional notice if the water authorized for diversion will be stored in an aquifer storage and recovery project, the diversion amount or diversion rate are not increased, and if the executive director determines after an administrative review that other water rights and the environment would not be affected by the request.

Fiscal Note: Costs to State and Local Government

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

This rulemaking implements changes to notice rules in Chapter 295 and is required in order to comply with state law, specifically HB 720 and HB 1964. The proposed rule is intended to streamline the water rights permitting process for amendment applications covered by HB 1964 and to implement the notice requirements for applications for AR and ASR projects under HB 720. As a result, the agency may experience a reduction in permit processing times for both types of applications.

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 compliance with state law and the streamlining of water rights permitting process for certain amendment applications.

There may be a cost savings for water rights applicants due to the reduction in information required for submission for amendments under HB 1964. The amount of the cost savings cannot be estimated.

The removal of permit barriers for ASR and AR projects may incentivize the development of this water source to meet the state's growing water needs.

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.

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 rulemaking does limit the notice and contested case hearing requirements for certain applications, as required by 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 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. A "Major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement laws enacted by the Texas Legislature. HB 720 sets forth requirements in TWC, Chapters 11 and 27, for ASR and AR projects. HB 1964 sets forth notice requirements in TWC, Chapter 11, for certain applications to amend water rights.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that there will be a significant cost to comply with the proposed rule because no new fees are proposed, therefore, the cost will not be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rule establishes notice requirements consistent with the requirements of HB 720 and HB 1964, therefore, will not adversely affect in a material way the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements for the following reasons: this rulemaking does not exceed any standard set by federal law because there are no federal standards governing water rights; does not exceed any express requirement of state law because it is consistent with the requirements of HB 720; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government because there are no delegation agreements or contracts between the commission and the federal government for the commission's water rights program; and is not based solely under the general powers of the agency, but is based specifically under TWC, §11.122(c) and HB 720, Section 4, as well as, under the other authority of the commission cited in the statutory authority section of this preamble.

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

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed action implements legislative requirements in HB 720 for ASR or AR projects and in HB 1964 for notice requirements for certain water right amendment applications.

The commission determined that the proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule establishes notice requirements for ASR and AR project applications consistent with the requirements in HB 720 and notice requirements for certain applications to amend water rights consistent with the requirements in HB 1964. It is not anticipated that there will be many ASR or AR project applications and the cost of complying with the regulations is not expected to be substantial. The proposed rule will also streamline notice requirements for certain water right amendment applications, allowing these applications to be processed more quickly without imposition of additional fees or costs since no new fees are proposed. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program (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 January 7, 2020, 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 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 2019-116-297-OW. The comment period closes on January 21, 2020. 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 Kathy Ramirez, Water Availability Division, at (512) 239-6757.

Statutory Authority

This amendment is proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §11.122(c), which requires the commission to adopt rules to effectuate the provisions of §11.122; and HB 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158, and TWC, Chapter 27, Subchapter H.

The proposed amendment implements HB 720 and HB 1964.

*§295.158. Notice of Amendments to Water Rights.*

(a) On motion of executive director.

(1) If the executive director determines to file a petition to amend a water right, notice of the determination stating the grounds therefore and a copy of a proposed amendment draft shall be personally served on or mailed by certified mail to the water right holder at the last address of record with the commission.

(2) This notice shall be given at least 15 days before a petition is filed with the commission.

(b) Requiring mailed and published notice. Unless authorized by subsection (c) of this section, applications for amendments to permits, certified filings, or certificates of adjudication, including, but not limited to, those of the following nature, must comply with requirements for a water use permit, including the notice requirements in the Texas Water Code, §11.132, and this subchapter:

(1) to change the place of use when other water users of state water may be affected;

(2) to increase an appropriation and/or rate or period of diversion;

(3) to change the purpose of use when the change would authorize a greater consumption of state water or would materially alter the period of time when state water could be diverted;

(4) to add points of diversion which would result in a greater rate of diversion or impair other water rights;

(5) to remove or modify the requirements or conditions of a water right which were included for the protection of other water rights;

(6) to change a point of diversion which may impair other water rights;

(7) to relocate or enlarge a reservoir; [~~or~~]

(8) to extend the period of duration of any term permit; or [~~.~~]

(9) to remove the authorization for storage in a reservoir that has not been constructed if the application requests:

(A) an increase in the amount of water to be diverted or the diversion rate based on an evaporation credit; or

(B) to change the use or purpose of use of a water right authorizing an appropriation of water for storage in an on-channel storage reservoir that has lost storage because of sedimentation to storage as part of an aquifer storage and recovery project for later retrieval and use as authorized by the original water right.

(c) Not requiring mailed and published notice.

(1) Only an application to amend an existing permit, certified filing, or certificate of adjudication which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Once the technical review of an application is complete and the technical memoranda have been filed with the chief clerk of the commission, the commission shall consider whether additional notice is required based on the particular facts of the application.

(2) Applications for the following do not require notice, except to the record holder, and do not require technical review:

(A) to add a purpose of use that does not substantially alter:

*(i)* the nature of the water right from a water right authorizing only non-consumptive use to a water right authorizing consumptive use; or

*(ii)* a pattern of use that is explicitly authorized by or required by the original water right;

(B) to add a place of use located in the same river basin as the place of use authorized in the original water right;

(C) to change the point of diversion provided that:

*(i)* the authorized rate of diversion is not increased;

*(ii)* the original point of diversion and the new point of diversion are located on the same contiguous tract of land;

*(iii)* there are no other water right holders with points of diversion located on the same watercourse between the original point of diversion and the new point of diversion;

*(iv)* there are no streamflow gages located on the watercourse between the original point of diversion and the new point of diversion that are referenced in the original water right or in another water right authorizing a diversion from the same watercourse; and

*(v)* there are not tributary watercourses that enter the watercourse that is the source of supply located between the original point of diversion and the new point of diversion.

(3) [~~(2)~~] Applications of the following descriptions may not require additional notice:

(A) to cure ambiguities or ineffective provisions in a water right;

(B) to reduce an appropriation or rate of diversion;

[(C) to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest. If no protest is received, further notice will not be required;]

(C) [(D)] to change the point of diversion, except for applications under paragraph (2)(C) of this subsection, when the existing rate of diversion will not be increased and there are no interjacent water right holders [users] of record between the originally authorized point of diversion and the new one, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water right holders [users] will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(D) [(E)] to add additional points of diversion, except for applications under paragraph (2)(C) of this subsection, where the existing rate of diversion will not be increased and there are no water right holders [users] of record between any originally authorized point of diversion and the new one to be added, or when interjacent water right holders [users] agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(E) [(F)] to increase the rate or period for diversion from a storage reservoir; and [.]

(F) to remove the authorization for storage in a reservoir that has not been constructed, provided that:

*(i)* the application does not request an increase in the diversion amount or rate; and

*(ii)* the executive director determines after an administrative review that the application will not cause a negative impact on other water rights or the environment that is greater than the effect the original permit would have had were the permit rights exercised to the full extent of the original 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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Texas Commission on Environmental Quality
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# CHAPTER 297. WATER RIGHTS, SUBSTANTIVE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §297.1 and §§297.41 - 297.43, concerning Water Rights, Substantive.

Background and Summary of the Factual Basis for the Proposed Rules

In 2019, the 86th Texas Legislature passed HB 720, which removes permitting barriers for aquifer storage and recovery (ASR) and aquifer recharge (AR) projects for both new water rights and existing water rights. HB 720 adds recharge as a beneficial use of water and sets out a process for new appropriations for ASR and AR projects. These new appropriations are subject to notice and contested case hearings and TCEQ has 180 days to complete technical review of the application. HB 720 also requires TCEQ to adopt rules providing for the considerations for determining water availability for new appropriations for ASR and AR.

HB 720 also addresses amendments to existing water rights for reservoirs that have not been constructed or existing reservoirs that have lost storage capacity because of sedimentation. A water right holder with a water right authorizing storage in a reservoir that has not been constructed can remove the storage authorization without notice and hearing if other water rights and the environment are not affected by the amendment.

A water right holder can also request to remove the storage authorization and increase the amount of water to be diverted or the diversion rate, based on an evaporation credit, to increase the amount of water available for ASR or AR project. A water right holder can also amend their water right to replace storage capacity lost to sedimentation with an ASR project. These two types of amendments are subject to notice and contested case hearing.

This rulemaking implements changes to Chapter 297 required by HB 720.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 39, Public Notice; Chapter 281, Applications Processing, Chapter 295, Water Rights, Procedural; and Chapter 331, Underground Injection Control, to implement HB 720.

Section by Section Discussion

§297.1, Definitions

The commission proposes §297.1(5) to provide a definition of an AR project consistent with the definition in Texas Water Code (TWC), §27.201. The commission proposes this change to implement TWC, §11.157(a) which allows water to be appropriated for AR. The subsequent paragraphs will be renumbered.

The commission proposes to remove the sentence in renumbered §297.1(52) stating that water injected into the ground for an ASR project remains state water. This change is to implement TWC, §11.023(d).

§297.41, General Approval Criteria

The commission proposes to amend §297.41(a)(3)(D) to implement TWC, §11.157(b)(1) and (c)(1), and §11.158(g)(2). These provisions require the commission to consider the requirements in TWC, §§11.134, 11.147, and 11.1471 in granting an application for a water right. Proposed amended §297.41(a)(3)(D) follows the language of TWC, §11.134.

§297.42, Water Availability

The commission proposes to amend §297.42(b). The proposed changes to §297.42(b) implement TWC, §11.157(b)(1) and 11.157(c)(1) and (2), and §11.158(g)(2), which require the commission to consider the requirements in TWC, §§11.134, 11. 147, and 11.1471 in granting an application for a water right. This change is to clarify that the commission can condition new and amended water rights for AR and ASR to protect the adopted environmental flow standards in 30 TAC Chapter 298 (Environmental Flow Standards for Surface Water).

The commission proposes to amend §297.42(d) to remove references to water availability for AR and ASR because water availability for these types of projects is specifically addressed in proposed §297.42(e). The commission also proposes to amend §297.42(d) to clarify the non-consumptive instream uses for which water may be appropriated to ensure consistency with TWC, §11.0235(d).

The commission proposes to add §297.42(e) to specify the water availability criteria for new appropriations for ASR and AR as required by TWC, §11.157(g). Proposed §297.42(e) states that new appropriations of water for these types of projects need not be continuously available as set out in TWC, §11.157(c)(3). The commission proposes that the minimum water availability criteria for these types of projects is that the full amount of the request be available at least one year in the period of record of the commission's water availability model for the applicable river basin. This availability criteria is consistent with the commission's current practice in reviewing applications that are not required to be based on historic normal streamflow. The commission further proposes that this availability criteria would apply provided the project is viable for the intended purpose and the water can be beneficially used without waste.

The commission proposes to add §297.42(f) to specify water availability criteria for new appropriations of water based on an evaporation credit, as described by TWC, §11.158(c). The commission proposes that evaporation credits would apply to on-channel storage that has not been constructed. The volume of water diverted for an off-channel project likely already includes the amount of water that would be lost to evaporation and the commission does not anticipate changes to the volume of water diverted from the stream if a water right holder removes the authorization for an off-channel reservoir from its water right. Further, substituting an ASR project for off-channel storage would not require an amendment to the underlying water right under TWC, §11.153, provided the terms of the water right are not changed and the water right holder obtains the required authorizations specified in that section. The commission proposes that water for these types of projects need not be continuously available. The commission further proposes that the evaporation credit be determined based on the evaporation calculations used in developing the terms of the original water right and cannot exceed the maximum annual modeled evaporation as determined in the commission's water availability model for the applicable river basin. The commission proposes these criteria for the protection of other water right holders. If an applicant for an amendment to a water right requests more water than would be available as an evaporation credit, TWC, §11.157, and the availability criteria under proposed §297.42(e) would apply to the additional volume of water requested in the application.

The commission proposes to add §297.42(g) to set out criteria for determining the volume of water available for conversion to an ASR project for water right holders with reservoirs which have lost storage capacity because of sedimentation under TWC, §11.158(d).The commission proposes that the volume of water be limited to the lesser of the calculated volume that has been lost to sedimentation and the volume of storage in an ASR project that is necessary to restore the yield of the reservoir that has been lost to sedimentation. The commission proposes these criteria for the protection of other water right holders. If an applicant for an amendment to a water right requests more water than would be needed to restore the yield lost to sedimentation, then TWC, §11.157, and the availability criteria under proposed §297.42(e) would apply to the additional volume of water requested in the application. The subsequent subsections will be re-lettered.

§297.43, Beneficial Uses

The commission proposes to amend §297.43 to ensure consistency with TWC, §11.023. The commission proposes amending subsection (a) to insert the language in TWC, §11.023(a), and amending paragraph (10) by removing the existing language relating to instream uses, water quality, aquatic and wildlife habitat, or freshwater inflows to bays and estuaries because these uses are not specified in TWC, §11.023. To the extent the commission has the authority to appropriate water for any of those uses, they would be covered in §297.43(a)(11). Finally, the commission incorporates the language in TWC, §11.023(9) into §297.43(10) to clarify that water appropriated for AR or ASR is a beneficial use of water, as set out in TWC, §11.023.

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 addresses necessary changes in order to comply with state law, specifically HB 720, which relates to appropriations of water for AR and use in ASR projects.

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 compliance with state law. The proposed rulemaking 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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking 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 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 not 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 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. A "Major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 720 which enacted requirements in TWC, Chapters 11 and 27, for ASR and AR projects.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that there will be a significant cost to comply with the proposed rules because no new fees are proposed, therefore, the cost will not be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rules establish program requirements consistent with the requirements of HB 720, therefore, will not adversely impact in a material way the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements for the following reasons: this rulemaking does not exceed any standard set by federal law because there are no federal standards governing water rights; does not exceed any express requirement of state law because it is consistent with the requirements of HB 720; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government because there are no delegation agreements or contracts between the commission and the federal government for the commission's water rights program; and is not based solely under the general powers of the agency, but is based specifically under HB 720, Section 4, as well as under the other authority of the commission cited in the statutory authority section of this preamble.

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

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed action implements legislative requirements in HB 720 for ASR or AR projects.

The commission determined that the proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules establish program requirements for aquifer storage or AR project applications consistent with the requirements of HB 720. It is not anticipated that there will be many ASR or AR project applications and the cost of complying with the regulations is not expected to be substantial because no new fees are proposed. The proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rules include those contained in 31 TAC §501.33. The proposed rules require that the commission consider the

adopted environmental flow standards in Chapter 298 in determining whether to grant an application and provide that the new water rights can be conditioned as appropriate to protect the adopted standards. The adopted standards provide adequate protection of the state's streams, rivers, bays, and estuaries. Since one of the purposes of the proposed rules is to ensure that the commission consider protection of coastal natural resources in considering applications for new or amended water rights that request additional water and can condition these water rights to ensure that coastal natural resources are protected, the rules are consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies, because the proposed rules are consistent with these CMP goals and policies; do not create or have a direct or significant adverse effect on any coastal natural resource areas; and one of the purposes of the proposed rules is to ensure protection of coastal natural resources as the commission issues new or amended water rights that request additional water.

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 January 7, 2020, 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 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 2019-116-297-OW. The comment period closes on January 21, 2020. 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 Kathy Ramirez, Water Availability Division, at (512) 239-6757.

## SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

### 30 TAC §297.1

Statutory Authority

This amendment is proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; and House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158 and TWC, Chapter 27, Subchapter H.

The proposed amendment implements HB 720.

*§297.1. Definitions.*

The following words and terms, when used in this chapter and in Chapters 288 and 295 of this title (relating to Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements; and Water Rights, Procedural, respectively), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agriculture or agricultural--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management;

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and

(G) aquaculture as defined in Texas Agriculture Code, §134.001, which reads "'aquaculture' or 'fish farming' means the business of producing and selling cultured species raised in private facilities. Aquaculture or fish farming is an agricultural activity."

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Appropriations--The process or series of operations by which an appropriative right is acquired. A completed appropriation thus results in an appropriative right; the water to which a completed appropriation in good standing relates is appropriated water.

(4) Appropriative right--The right to impound, divert, store, take, or use a specific quantity of state water acquired by law.

(5) Aquifer recharge project--A project involving the intentional recharge of an aquifer by means of an injection well or other means of infiltration, as described in Texas Water Code, §27.201(1).

(6) [~~(5)~~] Aquifer Storage and Recovery Project--A project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

(7) [~~(6)~~] Baseflow or normal flow--The portion of streamflow uninfluenced by recent rainfall or flood runoff and is comprised of springflow, seepage, discharge from artesian wells or other groundwater sources, and the delayed drainage of large lakes and swamps. (Accountable effluent discharges from municipal, industrial, agricultural, or other uses of ground or surface waters may be included at times.)

(8) [~~(7)~~] Beneficial inflows--Freshwater inflows providing for a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(9) [~~(8)~~] Beneficial use--Use of the amount of water which is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.

(10) [~~(9)~~] Certificate of adjudication--An instrument evidencing a water right issued to each person adjudicated a water right in conformity with the provisions of Texas Water Code, §11.323, or the final judgment and decree in State of Texas v. Hidalgo County Water Control and Improvement District No. 18, 443 S.W.2d 728 (Texas Civil Appeals - Corpus Christi 1969, writ ref. n.r.e.).

(11) [~~(10)~~] Certified filing--A declaration of appropriation or affidavit which was filed with the State Board of Water Engineers under the provisions of the 33rd Legislature, 1913, General Laws, Chapter 171, §14, as amended.

(12) [~~(11)~~] Claim--A sworn statement filed under Texas Water Code, §11.303.

(13) [~~(12)~~] Commencement of construction--An actual, visible step beyond planning or land acquisition, which forms the beginning of the on-going (continuous) construction of a project in the manner specified in the approved plans and specifications, where required, for that project. The action must be performed in good faith with the bona fide intent to proceed with the construction.

(14) [~~(13)~~] Conservation--Those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(15) [~~(14)~~] Conserved water--That amount of water saved by a water right holder through practices, techniques, or technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from the storage, transportation, distribution, or application of the water. Conserved water does not mean water made available simply through its non-use without the use of such practices, techniques, or technologies.

(16) [~~(15)~~] Dam--Any artificial structure, together with any appurtenant works, which impounds or stores water. All structures which are necessary to impound a single body of water shall be considered as one dam. A structure used only for diverting water from a watercourse by gravity is a diversion dam.

(17) [~~(16)~~] Diffused surface water--Water on the surface of the land in places other than watercourses. Diffused water may flow vagrantly over broad areas coming to rest in natural depressions, playa lakes, bogs, or marshes. (An essential characteristic of diffused water is that its flow is short-lived.)

(18) [~~(17)~~] District--Any district or authority created by authority of the Texas Constitution, either Article III, §52, (b), (1) and (2), or Article XVI, §59.

(19) [~~(18)~~] Domestic use--Use of water by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; for watering of domestic animals; and for water recreation including aquatic and wildlife enjoyment. If the water is diverted, it must be diverted solely through the efforts of the user. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold.

(20) [~~(19)~~] Drought of record--The historic period of record for a watershed in which the lowest flows were known to have occurred based on naturalized streamflow.

(21) [~~(20)~~] Firm yield--That amount of water, that the reservoir could have produced annually if it had been in place during the worst drought of record. In performing this simulation, naturalized streamflows will be modified as appropriate to account for the full exercise of upstream senior water rights is assumed as well as the passage of sufficient water to satisfy all downstream senior water rights valued at their full authorized amounts and conditions as well as the passage of flows needed to meet all applicable permit conditions relating to instream and freshwater inflow requirements.

(22) [~~(21)~~] Groundwater--Water under the surface of the ground other than underflow of a stream and underground streams, whatever may be the geologic structure in which it is standing or moving.

(23) [~~(22)~~] Habitat Mitigation--Actions taken to off-set anticipated adverse environmental impacts from a proposed project. Such actions and their sequence include:

(A) avoiding the impact altogether by not taking a certain action or parts of an action or pursuing a reasonably practicable alternative;

(B) minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(C) rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the project; and

(E) compensating for the impact by replacing or providing substitute resources or environments.

(24) [~~(23)~~] Hydropower use--The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(25) [~~(24)~~] Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric, but does not include agricultural use.

(26) [~~(25)~~] Instream use--The beneficial use of instream flows for such purposes including, but not limited to, navigation, recreation, hydropower, fisheries, game preserves, stock raising, park purposes, aesthetics, water quality protection, aquatic and riparian wildlife habitat, freshwater inflows for bays and estuaries, and any other instream use recognized by law. An instream use is a beneficial use of water. Water necessary to protect instream uses for water quality, aquatic and riparian wildlife habitat, recreation, navigation, bays and estuaries, and other public purposes may be reserved from appropriation by the commission.

(27) [~~(26)~~] Irrigation--The use of water for the irrigation of crops, trees, and pasture land, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

(28) [~~(27)~~] Irrigation water efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include but are not limited to evapotranspiration needs for vegetative maintenance and growth and salinity management and leaching requirements associated with irrigation.

(29) [~~(28)~~] Livestock use--The use of water for the open-range watering of livestock, exotic livestock, game animals or fur-bearing animals. For purposes of this definition, the terms livestock and exotic livestock are to be used as defined in Texas Agriculture Code, §142.001, and the terms game animals and fur-bearing animals are to be used as defined in Texas Parks and Wildlife Code, §63.001 and §71.001, respectively.

(30) [~~(29)~~] Mariculture--The propagation and rearing of aquatic species, including shrimp, other crustaceans, finfish, mollusks, and other similar creatures in a controlled environment using brackish or marine water.

(31) [~~(30)~~] Marine seawater--Water that is derived from the Gulf of Mexico.

(32) [~~(31)~~] Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

(33) [~~(32)~~] Municipal per capita water use--The sum total of water diverted into a water supply system for residential, commercial, and public and institutional uses divided by actual population served.

(34) [~~(33)~~] Municipal use--

(A) The use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, other public or recreational spaces; or

(B) the use of reclaimed water in lieu of potable water for the preceding purposes; or

(C) the use of return flows authorized pursuant to Texas Water Code, §11.042, in lieu of potable water for the preceding purposes. Return flows used for human consumption as defined in §290.38(34) of this title (relating to Definitions) must be of a quality suitable for the authorized beneficial use as may be required by applicable commission rules; or

(D) the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

*(i)* the application site is land owned or leased by the Chapter 26 permit holder; or

*(ii)* the application site is within an area for which the commission has adopted a no-discharge rule.

(35) [~~(34)~~] Navigable stream--By law, Texas Natural Resources Code, §21.001(3), any stream or streambed as long as it maintains from its mouth upstream an average width of 30 feet or more, at which point it becomes statutorily nonnavigable.

(36) [~~(35)~~] Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(37) [~~(36)~~] One-hundred-year flood--The flood peak discharge of a stream, based upon statistical data, which would have a 1.0% chance of occurring in any given year.

(38) [~~(37)~~] Permit--The authorization by the commission to a person whose application for a permit has been granted. A permit also means any water right issued, amended, or otherwise administered by the commission unless the context clearly indicates that the water right being referenced is being limited to a certificate of adjudication, certified filing, or unadjudicated claim.

(39) [~~(38)~~] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful or detrimental to humans, animal life, vegetation, or property, or the public health, safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

(40) [~~(39)~~] Priority--As between appropriators, the first in time is the first in right, Texas Water Code, §11.027, unless determined otherwise by an appropriate court or state law.

(41) [~~(40)~~] Reclaimed water--Municipal or industrial wastewater or process water that is under the direct control of the treatment plant owner/operator, or agricultural tailwater that has been collected for reuse, and which has been treated to a quality suitable for the authorized beneficial use.

(42) [~~(41)~~] Recreational use--The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course, or similar development.

(43) [~~(42)~~] Register--The *Texas Register*.

(44) [~~(43)~~] Reservoir system operations--The coordinated operation of more than one reservoir or a reservoir in combination with a direct diversion facility in order to optimize available water supplies.

(45) [~~(44)~~] Return water or return flow--That portion of state water diverted from a water supply and beneficially used which is not consumed as a consequence of that use and returns to a watercourse. Return flow includes sewage effluent.

(46) [~~(45)~~] Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(47) [~~(46)~~] River basin--A river or coastal basin designated by the Texas Water Development Board as a river basin under Texas Water Code, §16.051. The term does not include waters originating in bays or arms of the Gulf of Mexico.

(48) [~~(47)~~] Runoff--That portion of streamflow comprised of surface drainage or rainwater from land or other surfaces during or immediately following a rainfall.

(49) [~~(48)~~] Secondary use--The reuse of state water for a purpose after the original, authorized use.

(50) [~~(49)~~] Sewage or sewage effluent--Water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with any groundwater infiltration and surface waters with which it may be commingled.

(51) [~~(50)~~] Spreader dam--A levee-type embankment placed on alluvial fans or within a flood plain of a watercourse, common to land use practices, for the purpose of overland spreading of diffused waters and overbank flows.

(52) [~~(51)~~] State water--The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the stormwater, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state. [~~Additionally, state water injected into the ground for an aquifer storage and recovery project remains state water.~~] State water does not include percolating groundwater; nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(53) [~~(52)~~] Stormwater or floodwater--Water flowing in a watercourse as the result of recent rainfall.

(54) [~~(53)~~] Streamflow--The water flowing within a watercourse.

(55) [~~(54)~~] Surplus water--Water taken from any source in excess of the initial or continued beneficial use of the appropriator for the purpose or purposes authorized by law. Water that is recirculated within a reservoir for cooling purposes shall not be considered to be surplus water.

(56) [~~(55)~~] Unappropriated water--The amount of state water remaining in a watercourse or other source of supply after taking into account complete satisfaction of all existing water rights valued at their full authorized amounts and conditions.

(57) [~~(56)~~] Underflow of a stream--Water in sand, soil, and gravel below the bed of the watercourse, together with the water in the lateral extensions of the water-bearing material on each side of the surface channel, such that the surface flows are in contact with the subsurface flows, the latter flows being confined within a space reasonably defined and having a direction corresponding to that of the surface flow.

(58) [~~(57)~~] Waste--The diversion of water if the water is not used for a beneficial purpose; the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are used in applying the water to that purpose. Waste may include, but not be limited to, the unreasonable loss of water through faulty design or negligent operation of a water delivery, distribution or application system, or the diversion or use of water in any manner that causes or threatens to cause pollution of water. Waste does not include the beneficial use of water where the water may become polluted because of the nature of its use, such as domestic or residential use, but is subsequently treated in accordance with all applicable rules and standards prior to its discharge into or adjacent to water in the state so that it may be subsequently beneficially used.

(59) [~~(58)~~] Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for preventing or reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate planning document or may be contained within another water management document(s).

(60) [~~(59)~~] Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(61) [~~(60)~~] Watercourse--A definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. (The water may flow continuously or intermittently, and if the latter with some degree of regularity, depending on the characteristics of the sources.)

(62) [~~(61)~~] Water right--A right or any amendment thereto acquired under the laws of this state to impound, divert, store, convey, take, or use state water.

(63) [~~(62)~~] Watershed--A term used to designate the area drained by a stream and its tributaries, or the drainage area upstream from a specified point on a stream.

(64) [~~(63)~~] Water supply--Any body of water, whether static or moving, either on or under the surface of the ground, available for beneficial use on a reasonably dependable basis.

(65) [~~(64)~~] Wetland--An area (including a swamp, marsh, bog, prairie pothole, playa, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include:

(A) irrigated acreage used as farmland;

(B) man-made wetlands of less than one acre; or

(C) man-made wetlands not constructed with wetland creation as a stated objective, including, but not limited to, impoundments made for the purpose of soil and water conservation which have been approved or requested by soil and water conservation districts. This definition does not apply to man-made wetlands described under this subparagraph constructed or created on or after August 28, 1989. If this definition conflicts with the federal definition in any manner, the federal definition prevails.

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 November 22, 2019.

TRD-201904444
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 293-1806

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# SUBCHAPTER E. ISSUANCE AND CONDITIONS OF WATER RIGHTS

**30 TAC §§297.41 - 297.43**

Statutory Authority

These amendments are proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; and House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and 11.158 and TWC, Chapter 27, Subchapter H.

The proposed amendments implement HB 720.

*§297.41. General Approval Criteria.*

(a) Except as otherwise provided by this chapter, the commission shall grant an application for a water right only if:

(1) the application conforms to the requirements prescribed by Chapter 295 of this title (relating to Water Rights, Procedural) and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers any applicable environmental flow standards established under Texas Water Code (TWC), §11.1471 and, if applicable, the assessments performed under TWC [~~Texas Water Code (TWC)~~], §§11.147(d) and (e), and 11.150 - 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement;

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions); and

(5) the applicant has completed and returned all Texas Water Development Board surveys of groundwater and surface water use required since September 1, 2001 under TWC, §16.012.

(b) Beginning January 5, 2002, the commission will not issue a water right for municipal purposes in a region that does not have an approved regional water plan in accordance with TWC, §16.053(i) unless the commission determines that new, changed, or unaccounted for conditions warrant the waiver of this requirement.

*§297.42. Water Availability.*

(a) Except as provided by Texas Water Code (TWC), §11.1381, and §297.19 of this title (relating to Term Permit under [~~Under~~] Texas Water Code, §11.1381 [~~§§11.1381 and 11.153, 11.155~~]), an application for a new or increased appropriation will be denied unless there is a sufficient amount of unappropriated water available for a sufficient amount of the time to make the proposed project viable and ensure the beneficial use of water without waste.

(b) A new water right may be conditioned as appropriate to protect any applicable environmental flow standards as described in Chapter 298 of this title (relating to Environmental Flow Standards for Surface Water), and, if applicable, instream uses, water quality, aquatic and wildlife habitat, and freshwater inflows to bays and estuaries as provided by TWC, §§11.147, 11.150, 11.152, and 16.059.

(c) For the approval of an application for a direct diversion from a stream without sufficient on or off channel water storage facilities for irrigation, approximately 75% of the water requested must be available approximately 75% of the time when distributed on a monthly basis and based upon the available historic stream flow record. Lower availability percentages may be acceptable if the applicant can demonstrate that a long-term, reliable, alternative source or sources of water of sufficient quantity and quality are economically available to the applicant to make the proposed project viable and ensure the beneficial use of state water without waste.

(d) Projects that are not required to be based upon the continuous availability of historic, normal stream flow include, but are not limited to: [~~the artificial recharge of the Edwards Aquifer under TWC, §11.023(c);~~] conjunctive ground and surface water management projects [~~such as aquifer storage and recovery projects~~]; diversions or impoundments at times of above-normal stream flow (e.g., "scalping" operations) for seasonal or supplemental use; a system operation in conjunction with other water rights; non-consumptive instream uses except for instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems or other similar beneficial uses; or other similar type projects. The required availability of unappropriated water for these special type projects shall be determined on a case-by-case basis based upon whether the proposed project can be viable for the intended purposes and the water will be beneficially used without waste.

(e) New appropriations of water for recharge into an aquifer underlying this state, including aquifer recharge projects as defined by TWC, §27.201 may be for water that is not continuously available. Water availability for the full amount of water requested for these types of projects must, at a minimum, be available at least one year in the period of record based on the commission's water availability model for the applicable river basin, and the proposed project must be viable for the intended purposes and the water must be beneficially used without waste.

(f) New appropriations of water based on an increase in the amount of water diverted or the rate of diversion resulting from an evaporation credit under TWC, §11.158(c) may be for water that is not continuously available. Water availability for projects under this subsection that request an increase in the amount of water diverted or the rate of diversion from an on-channel reservoir that has not been constructed shall be based on the evaporation calculations that were used in developing the terms of the water right for which the amendment is sought and cannot exceed the maximum annual modeled evaporation as determined in the commission's water availability model for the applicable river basin.

(g) The volume of water available for conversion of a water right that authorizes storage in a reservoir that has lost storage capacity because of sedimentation to storage as part of an aquifer storage and recovery project, as described in TWC, §11.158(d), does not have to be continuously available. The volume of water that can be converted to storage in an aquifer storage and recovery project under this subsection is limited to the lesser of:

(1) the storage volume that is demonstrated to have been lost to sedimentation, as determined by a survey performed by the Texas Water Development Board; or

(2) the volume of storage in the aquifer storage and recovery project that would restore the amount of previously authorized yield lost to sedimentation.

(h) [~~(e)~~] For an application for an on-channel storage facility to be authorized for domestic or municipal water use, the proposed diversion right of the reservoir must be equal to its firm yield. The purpose of this limitation is to ensure a secure and dependable source of water supply for uses necessary to protect the public health, safety, and welfare (see also [~~30 TAC~~] §290.41(b) of this title (relating to Water Sources) requiring public water systems to have a "safe" yield capable of supplying the maximum daily demands during extended periods of peak usage and "critical hydrologic conditions"). Such reservoir may be authorized in excess of its firm yield when the implementation of a drought management plan or alternative sources of water supply such as groundwater, other reservoir systems, or other means are available to satisfy water needs during drought periods when the reservoir's normal supply capabilities would be exceeded.

(i) [~~(f)~~] Except for an application for an emergency, temporary, seasonal, or term permit, or as provided by this section, the commission may require an applicant to provide storage sufficient to yield the requested annual diversion.

(j) [~~(g)~~] In order to make the optimum beneficial use of available water, a water right may be granted based upon the availability of return flows or discharges. However, a water right granted upon return flows or discharges that may cease in the future because of new or increased direct reuse (i.e., the lawful reuse of water before it is returned or discharged into the stream) or that may cease for other lawful reasons will be granted with the express provision that the water available for the water right is dependent upon potentially interruptible return flows or discharges.

*§297.43. Beneficial Uses.*

(a) To the extent that State water has not been set aside by the commission under Texas Water Code (TWC), §11.1471(a)(2), to meet downstream instream flow needs or freshwater inflow needs, State water may be appropriated, stored, or diverted for the following purposes of use:

(1) domestic and municipal;

(2) industrial;

(3) agriculture;

(4) mining and the recovery of minerals;

(5) hydroelectric power;

(6) navigation;

(7) recreation and pleasure;

(8) public parks;

(9) game preserves;

(10) recharge into an aquifer underlying this state other than an aquifer described under subsection (b) of this section through surface infiltration or an aquifer recharge project as defined by TWC, §27.201 [~~instream uses, water quality, aquatic and wildlife habitat, or freshwater inflows to bays and estuaries~~]; and

(11) other beneficial purposes of use recognized by law.

(b) Unappropriated storm water and floodwater may be appropriated to recharge freshwater bearing sands and aquifers in the portion of the Edwards Aquifer located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays Counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a water right holder for this recharge purpose.

(c) The amount of water appropriated for each purpose listed under this section shall be specifically appropriated for that purpose. The commission may authorize the appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.

(d) State policy regarding preferences for certain type uses provided by Texas Water Code (TWC), §11.024, does not alter the basic principle of priority based upon first in time established under TWC, §11.027. Rather, such preferences will be used, in part, by the commission in determining which competing new uses will be granted water rights as provided by TWC, §11.123.

(e) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by 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 November 22, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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## CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§331.2, 331.7, 331.9, and 331.131 and proposes new §§331.262 - 331.267.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking implements House Bill (HB) 720, 86th Texas Legislature, 2019, addressing the commission's regulation of aquifer recharge (AR) projects in Texas. HB 720 adds Subchapter H, Aquifer Recharge Projects, to the Texas Water Code (TWC), Chapter 27. The proposed amendments add definitions, authorization mechanisms, standards, and requirements for Class V recharge wells associated with AR projects.

As part of this rulemaking, the commission is proposing amendments to 30 TAC Chapter 39, Public Notice; Chapter 281, Applications Processing; Chapter 295, Water Rights, Procedural; and Chapter 297, Water Rights, Substantive.

Section by Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections and correct uses of references. These changes are non-substantive and are not specifically discussed in this preamble.

*§331.2, Definitions*

The commission proposes to add §331.2(7)(A) - (E) to define "Aquifer recharge project" to conform to HB 720 and TWC, §27.201(1). The subsequent definitions will be renumbered accordingly.

The commission proposes to amend renumbered §331.2(51) and (56) to correct the cross-reference from TWC, §27.023 to TWC, §27.025.

The commission proposes to amend renumbered §331.2(93) to add "or an aquifer recharge project" to the definition to conform to TWC, §27.201(3).

The commission proposes to add §331.2(96) to define "Recharge injection well" to conform to TWC, §27.201(4). The subsequent definitions will be renumbered.

*§331.7, Permit Required*

The commission proposes to amend §331.7(h) to add "or an aquifer recharge (AR) project" to the types of projects for which Class V injection wells may be authorized by rule, individual permit or general permit, to conform to TWC, §27.203(a).

*§331.9, Injection Authorized by Rule*

The commission proposes to amend §331.9(b)(2)(E) to include reference to proposed Subchapter O (Additional Requirements for Class V Injection Wells Associated with Aquifer Recharge Projects) to implement newly adopted TWC, Chapter 27, Subchapter H.

*§331.131, Applicability*

The commission proposes to amend §331.131 to include reference to proposed Subchapter O to implement newly adopted TWC, Chapter 27, Subchapter H.

*§331.262, Applicability*

The commission proposes new §331.262 to explain that the requirements of current Chapter 331, Subchapter H and proposed new Chapter 331, Subchapter O are both applicable to all Class V AR projects, as established by TWC, §§27.201 - 27.207.

*§331.263, Area of Review*

The commission proposes new §331.263 to provide the standards applicable to Class V AR projects for the identification and review of activities in the project area that may impact or be impacted by the AR project as established by TWC, §27.203(b) and §27.204(a).

*§331.264, Construction and Closure Standards*

The commission proposes new §331.264 to provide the construction and closure standards applicable to Class V AR projects as established by TWC, §27.204(a).

*§331.265, Operating Requirements*

The commission proposes new §331.265(a) - (e) to provide the operating requirements applicable to Class V AR projects, with the primary objectives of preventing the projects from being operated in a manner that endangers underground sources of drinking water and preventing movement of injected fluid into unauthorized zones, as established by TWC, §27.203(b) and §27.204(a).

The commission proposes new §331.265(f) to require all AR injection wells be installed with a flow meter to measure the volume of water injected, a requirement established by TWC, §27.205.

*§331.266, Monitoring and Reporting Requirements*

The commission proposes new §331.266 to specify the operating functions to be monitored, the monitoring frequency, and the elements to be reported to the executive director for all Class V AR projects, as established by TWC, §27.205 and §27.206.

*§331.267, Additional Requirements*

The commission proposes new §331.267 to provide additional requirements applicable to Class V AR projects. These requirements include matters to be considered by the commission, as specified by TWC, §27.203(b), and information to be submitted to the executive director by the owner or operator of the AR project. This specific information is necessary to evaluate the requirements established by TWC, §27.203(b) and §27.204(a), and includes information on construction, logging and testing results, and modeling results.

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 addresses necessary changes in order to comply with state law, specifically HB 720. The proposed rules add definitions, authorized mechanisms, standards and requirements for Class V recharge wells associated with AR projects.

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 compliance with state law. The proposed rulemaking is not anticipated to result in any significant 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 Communities Impact Assessment

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 amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking 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 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; however, it does increase 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 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. A "Major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 720 which enacted requirements in TWC, Chapters 11 and 27, for ASR and AR projects.

Second, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that there will be a significant cost to comply with the proposed rules because no new fees are proposed, therefore, the cost will not be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The proposed rulemaking establishes program requirements consistent with the requirements of HB 720, therefore, will not adversely affect in a material way the public health and safety of the state or a sector of the state.

Finally, the rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements for the following reasons: this rulemaking does not exceed any standard set by federal law for the commission's Underground Injection Control Program authorized for the state of Texas under the federal Safe Drinking Water Act; does not exceed any express requirement of state law because it is consistent with the requirements of HB 720; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government because it is consistent with the requirements of the commission's Underground Injection Control Program; and is not based solely under the general powers of the agency, but is based specifically under TWC, §27.019, and HB 720, Section 4, as well as, under the other authority of the commission cited in the statutory authority section of this preamble.

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

Takings Impact Assessment

The commission evaluated this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed action implements legislative requirements in HB 720 for aquifer storage or AR projects.

The commission determined that the proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules establish program requirements for AR projects consistent with HB 720. It is not anticipated that there will be many AR project applications and the cost of complying with the regulations is not expected to be substantial because no new fees are proposed. The proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 7, 2020, 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 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 2019-116-297-OW. The comment period closes on January 21, 2020. 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 Carol Dye, Underground Injection Control Permits Section, at (512) 239-1504.

## SUBCHAPTER A. GENERAL PROVISIONS

**30 TAC §§331.2, 331.7, 331.9**

Statutory Authority

These amendments are proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.003, which allows the commission to use all reasonable methods to implement its policy of maintaining the quality of fresh water in the state of Texas; TWC, §27.011, which establishes the commission's jurisdiction over certain injection well permits; TWC, §27.019, which specifically authorizes the commission to adopt rules and procedures necessary for performance of its powers, duties, and functions under TWC, Chapter 27; and, House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158 and TWC, Chapter 27, Subchapter H.

The proposed amendments implement HB 720.

*§331.2. Definitions.*

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) Abandoned well--A well which has been permanently discontinued from use or a well for which, after appropriate review and evaluation by the commission, there is no reasonable expectation of a return to service.

(2) Activity--The construction or operation of any of the following:

(A) an injection well for disposal of waste;

(B) an injection or production well for the recovery of minerals;

(C) a monitor well at a Class III injection well site;

(D) pre-injection units for processing or storage of waste; or

(E) any other class of injection well regulated by the commission.

(3) Affected person--Any person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the proposed injection operation for which a permit is sought.

(4) Annulus--The space in the wellbore between the injection tubing and the long string casing and/or liner.

(5) Annulus pressure differential--The difference between the annulus pressure and the injection pressure in an injection well.

(6) Aquifer--A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(7) Aquifer recharge project--A project involving the intentional recharge of an aquifer by means of an injection well authorized under this chapter or other means of infiltration, including actions designed to:

(A) reduce declines in the water level of the aquifer;

(B) supplement the quantity of groundwater available;

(C) improve water quality in an aquifer;

(D) improve spring flows and other interactions between groundwater and surface water; or

(E) mitigate subsidence.

(8) [~~(7)~~] Aquifer restoration--The process used to achieve or exceed water quality levels established by the commission for a permit/production area.

(9) [~~(8)~~] Aquifer storage and recovery--The injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.

(10) [~~(9)~~] Aquifer storage and recovery injection well--A Class V injection well used for the injection of water into a geologic formation as part of an aquifer storage and recovery project.

(11) [~~(10)~~] Aquifer storage and recovery production well--A well used for the production of water from a geologic formation as part of an aquifer storage and recovery project.

(12) [~~(11)~~] Aquifer storage and recovery project--A project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

(13) [~~(12)~~] Area of review--The area surrounding an injection well described according to the criteria set forth in §331.42 of this title (relating to Area of Review) or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 mile or a number calculated according to the criteria set forth in §331.42 of this title.

(14) [~~(13)~~] Area permit--A permit that authorizes the construction and operation of two or more similar injection, production, or monitoring wells used in operations associated with Class III well activities within a specified area.

(15) [~~(14)~~] Artificial liner--The impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene,

elasticized polyolefin, polyvinyl chloride (PVC), other manmade materials, or similar materials.

(16) [~~(15)~~] Baseline quality--The parameters and their concentrations that describe the local groundwater quality of an aquifer prior to the beginning of injection operations.

(17) [~~(16)~~] Baseline well--A well from which groundwater is analyzed to define baseline quality in the permit area (regional baseline well) or in the production area (production area baseline well).

(18) [~~(17)~~] Bedded salt--A geologic formation, group of formations, or part of a formation consisting of non-domal salt that is layered and may be interspersed with non-salt sedimentary materials such as anhydrite, shale, dolomite, and limestone. The salt layers themselves often contain significant impurities.

(19) [~~(18)~~] Bedded salt cavern disposal well--A well or group of wells and connecting storage cavities which have been created by solution mining, dissolving or excavation of salt bearing deposits or other geological formations and subsequently developed for the purpose of disposal of nonhazardous drinking water treatment residuals.

(20) [~~(19)~~] Blanket material or blanket pad--A fluid placed within a salt cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the salt cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, mineral oil, or some fluid possessing similar noncorrosive, nonsoluble, low density properties. The blanket material is placed between the salt cavern's outermost hanging string and innermost cemented casing.

(21) [~~(20)~~] Buffer area--The area between any mine area boundary and the permit area boundary.

(22) [~~(21)~~] Caprock--A geologic formation typically overlying the crest and sides of a salt stock. The caprock consists of a complex assemblage of minerals including calcite ($CaCO_3$), anhydrite ($CaSO_4$), and accessory minerals. Caprocks often contain lost circulation zones characterized by rock layers of high porosity and permeability.

(23) [~~(22)~~] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(24) [~~(23)~~] Casing--Material lining used to seal off strata at and below the earth's surface.

(25) [~~(24)~~] Cement--A substance generally introduced as a slurry into a wellbore which sets up and hardens between the casing and borehole and/or between casing strings to prevent movement of fluids within or adjacent to a borehole, or a similar substance used in plugging a well.

(26) [~~(25)~~] Cementing--The operation whereby cement is introduced into a wellbore and/or forced behind the casing.

(27) [~~(26)~~] Cesspool--A drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(28) [~~(27)~~] Commercial facility--A Class I permitted facility, where one or more commercial wells are operated.

(29) [~~(28)~~] Commercial underground injection control (UIC) Class I well facility--Any waste management facility that accepts, for a charge, hazardous or nonhazardous industrial solid waste for disposal in a UIC Class I injection well, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(30) [~~(29)~~] Commercial well--An underground injection control Class I injection well which disposes of hazardous or nonhazardous industrial solid wastes, for a charge, except for a captured facility or a facility that accepts waste only from facilities owned or effectively controlled by the same person.

(31) [~~(30)~~] Conductor casing or conductor pipe--A short string of large-diameter casing used to keep the top of the wellbore open during drilling operations.

(32) [~~(31)~~] Cone of influence--The potentiometric surface area around the injection well within which increased injection zone pressures caused by injection of wastes would be sufficient to drive fluids into an underground source of drinking water or freshwater aquifer.

(33) [~~(32)~~] Confining zone--A part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.

(34) [~~(33)~~] Contaminant--Any physical, biological, chemical, or radiological substance or matter in water.

(35) [~~(34)~~] Control parameter--Any physical parameter or chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well. Monitoring includes measurement with field instrumentation or sample collection and laboratory analysis.

(36) [~~(35)~~] Desalination brine--The waste stream produced by a desalination operation containing concentrated salt water, other naturally occurring impurities, and additives used in the operation and maintenance of a desalination operation.

(37) [~~(36)~~] Desalination concentrate--Same as desalination brine.

(38) [~~(37)~~] Desalination operation--A process which produces water of usable quality by desalination.

(39) [~~(38)~~] Disposal well--A well that is used for the disposal of waste into a subsurface stratum.

(40) [~~(39)~~] Disturbed salt zone--Zone of salt enveloping a salt dome cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt dome cavern, and is the result of mining activities during salt dome cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(41) [~~(40)~~] Drilling mud--A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(42) [~~(41)~~] Drinking water treatment residuals--Materials generated, concentrated or produced as a result of treating water for human consumption.

(43) [~~(42)~~] Drywell--A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(44) [~~(43)~~] Enhanced oil recovery project (EOR)--The use of any process for the displacement of oil from the reservoir other

than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process. This term does not include pressure maintenance or water disposal projects.

(45) [~~(44)~~] Excursion--The movement of mining solutions, as determined by analysis for control parameters, into a designated monitor well.

(46) [~~(45)~~] Existing injection well--A Class I well which was authorized by an approved state or United States Environmental Protection Agency-administered program before August 25, 1988, or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(47) [~~(46)~~] Fluid--Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(48) [~~(47)~~] Formation--A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(49) [~~(48)~~] Formation fluid--Fluid present in a formation under natural conditions.

(50) [~~(49)~~] Fresh water--Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this chapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

*(i)* it is used as drinking water for human consumption; or

*(ii)* the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

*(iii)* it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L total dissolved solids can be put to a beneficial use.

(51) [~~(50)~~] General permit--A permit issued under the provisions of this chapter authorizing the disposal of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals as provided by Texas Water Code, §27.025 [~~§27.023~~].

(52) [~~(51)~~] Groundwater--Water below the land surface in a zone of saturation.

(53) [~~(52)~~] Groundwater protection area--A geographic area (delineated by the state under federal Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(54) [~~(53)~~] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(55) [~~(54)~~] Improved sinkhole--A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(56) [~~(55)~~] Individual permit--A permit, as defined in the Texas Water Code (TWC), §27.011 and §27.021, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 27 (other than TWC, §27.025 [~~§27.023~~]).

(57) [~~(56)~~] Injection interval--That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(58) [~~(57)~~] Injection operations--The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(59) [~~(58)~~] Injection well--A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(60) [~~(59)~~] Injection zone--A formation, a group of formations, or part of a formation that receives fluid through a well.

(61) [~~(60)~~] In service--The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(62) [~~(61)~~] Intermediate casing--A string of casing with diameter intermediate between that of the surface casing and that of the smaller long-string or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long-string or production casing.

(63) [~~(62)~~] Large capacity cesspool--A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(64) [~~(63)~~] Large capacity septic system--A septic system that is designed for a flow of greater than 5,000 gallons per day.

(65) [~~(64)~~] 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.

(66) [~~(65)~~] Liner--An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(67) [~~(66)~~] Long string casing or production casing--A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(68) [~~(67)~~] Lost circulation zone--A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(69) [~~(68)~~] Mine area--The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(70) [~~(69)~~] Mine plan--A plan for operations at a mine, consisting of:

(A) a map of the permit area identifying the location and extent of existing and proposed production areas; and

(B) an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(71) [~~(70)~~] Monitor well--Any well used for the sampling or measurement with field instrumentation of any chemical or physical property of subsurface strata or their contained fluids. The term "monitor well" shall have the same meaning as the term "monitoring well" as defined in Texas Water Code, §27.002.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling or measurement with field instrumentation is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units.

(72) [~~(71)~~] Motor vehicle waste disposal well--A well used for the disposal of fluids from vehicular repair or maintenance activities including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(73) [~~(72)~~] Native groundwater--Groundwater naturally occurring in a geologic formation.

(74) [~~(73)~~] New injection well--Any well, or group of wells, not an existing injection well.

(75) [~~(74)~~] New waste stream--A waste stream not permitted.

(76) [~~(75)~~] Non-commercial facility--A Class I permitted facility which operates only non-commercial wells.

(77) [~~(76)~~] Non-commercial underground injection control (UIC) Class I well facility--A UIC Class I permitted facility where only non-commercial wells are operated.

(78) [~~(77)~~] Non-commercial well--An underground injection control Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(79) [~~(78)~~] Notice of change (NOC)--A written submittal to the executive director from a permittee authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the waste to be injected.

(80) [~~(79)~~] Notice of intent (NOI)--A written submittal to the executive director requesting coverage under the terms of a general permit.

(81) [~~(80)~~] Off-site--Property which cannot be characterized as on-site.

(82) [~~(81)~~] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(83) [~~(82)~~] Out of service--The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(84) [~~(83)~~] Permit area--The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

(85) [~~(84)~~] Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(86) [~~(85)~~] Point of injection--For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(87) [~~(86)~~] Pollution--The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

*(i)* to humans, animal life, vegetation, or property; or

*(ii)* to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(88) [~~(87)~~] Pre-injection units--The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(89) [~~(88)~~] Production area--The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(90) [~~(89)~~] Production area authorization--An authorization, issued under the terms of a Class III injection well area permit, approving the initiation of mining activities in a specified production area within a permit area, and setting specific conditions for production and restoration in each production area within an area permit.

(91) [~~(90)~~] Production well--A well used to recover uranium through in situ solution recovery, including an injection well used to recover uranium. The term does not include a well used to inject waste.

(92) [~~(91)~~] Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(93) [~~(92)~~] Project operator--A person holding an authorization by rule, individual permit, or general permit to undertake an aquifer storage and recovery project or an aquifer recharge project.

(94) [~~(93)~~] Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances as defined in §290.38 of this title (relating to Definitions).

(95) [~~(94)~~] Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2, and as amended.

(96) Recharge injection well--A Class V injection well used for the injection of water into a geologic formation for an aquifer recharge project, including an improved sinkhole or cave connected to an aquifer.

(97) [~~(95)~~] Registered Well--A well registered in accordance with the requirements of §331.221 of this title (relating to Registration of Wells).

(98) [~~(96)~~] Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(99) [~~(97)~~] Restored aquifer--An aquifer whose local groundwater quality, within a production area, has, by natural or

artificial processes, returned to the restoration table values established in accordance with the requirements of §331.107 of this title (relating to Restoration).

(100) [~~(98)~~] Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt formation, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(101) [~~(99)~~] Salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the [~~Texas~~] Railroad Commission of Texas, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject nonhazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(102) [~~(100)~~] Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(103) [~~(101)~~] Salt dome cavern confining zone--A zone between the salt dome cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt dome cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt dome cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt dome cavern or its disturbed salt zone.

(104) [~~(102)~~] Salt dome cavern injection interval--That part of a salt dome cavern injection zone consisting of the void space of the salt dome cavern into which waste is stored or disposed of, or which is capable of receiving waste for storage or disposal.

(105) [~~(103)~~] Salt dome cavern injection zone--The void space of a salt dome cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt dome cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(106) [~~(104)~~] Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(107) [~~(105)~~] Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(108) [~~(106)~~] Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(109) [~~(107)~~] Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(110) [~~(108)~~] Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. This definition includes subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions).

(111) [~~(109)~~] Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(112) [~~(110)~~] Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(113) [~~(111)~~] Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(114) [~~(112)~~] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(115) [~~(113)~~] Underground injection--The subsurface emplacement of fluids through a well.

(116) [~~(114)~~] Underground injection control--The program under the federal Safe Drinking Water Act, 42 United States Code, Part C, including the approved Texas state program.

(117) [~~(115)~~] Underground source of drinking water--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(118) [~~(116)~~] Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(119) [~~(117)~~] Verifying analysis--A second sampling and analysis or measurement with instrumentation of control parameters for the purpose of confirming a routine sample analysis or measurement which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(120) [~~(118)~~] Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(121) [~~(119)~~] Well injection--The subsurface emplacement of fluids through a well.

(122) [~~(120)~~] Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(123) [~~(121)~~] Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the injection interval, thus making it possible for fluid to move more readily into the formation including, but not limited to, surging, jetting, and acidizing.

(124) [~~(122)~~] Workover--An operation in which a downhole component of a well is repaired, the engineering design of the

well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

*§331.7. Permit Required.*

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule) and by subsections (d) - (f) of this section, all injection wells and activities must be authorized by an individual permit.

(b) For Class III in situ uranium solution mining wells, Frasch sulfur wells, and other Class III operations under commission jurisdiction, an area permit authorizing more than one well may be issued for a defined permit area in which wells of similar design and operation are proposed. The wells must be operated by a single owner or operator. Before commencing operation of those wells, the permittee may be required to obtain a production area authorization for separate production or mining areas within the permit area.

(c) The owner or operator of a large capacity septic system, a septic system which accepts industrial waste, or a subsurface area drip dispersal system, as defined in §222.5 of this title (relating to Definitions) must obtain a wastewater discharge permit in accordance with Texas Water Code, Chapter 26 or Chapters 26 and 32, and Chapter 305 of this title (relating to Consolidated Permits), and must submit the inventory information required under §331.10 of this title (relating to Inventory of Wells Authorized by Rule).

(d) Pre-injection units for Class I nonhazardous, noncommercial injection wells and Class V injection wells permitted for the disposal of nonhazardous waste must be either authorized by a permit issued by the commission or registered in accordance with §331.17 of this title (relating to Pre-Injection Units Registration). The option of registration provided by this subsection shall not apply to pre-injection units for Class I injection wells used for the disposal of byproduct material, as that term is defined in Chapter 336 of this title (relating to Radioactive Substance Rules). Pre-injection units for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals are not subject to authorization by registration but are subject to authorization by an individual permit or under the general permit issued under Subchapter L of this chapter (relating to General Permit Authorizing Use of a Class I Injection Well to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals).

(e) The commission may issue a general permit under Subchapter L of this chapter. The commission may determine that an injection well and the injection activities are more appropriately regulated under an individual permit than under a general permit based on findings that the general permit will not protect ground and surface fresh water from pollution due to site-specific conditions.

(f) Regardless of [~~Notwithstanding~~] subsection (a) of this section, an injection well authorized by the Railroad Commission of Texas to use nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes does not require a permit from the commission. The use or disposal of radioactive material under this subsection is subject to the applicable requirements of Chapter 336 of this title.

(g) Permits issued before September 1, 2007 for Class III wells for uranium mining will expire on September 1, 2012 unless the permit holder submits an application for permit renewal under §305.65 of this title (relating to Renewal) before September 1, 2012. Any holders of permits for Class III wells for uranium mining issued before September 1, 2007 who allow those permits to expire by not submitting a permit renewal application by September 1, 2012 are not relieved from the obligations under the expired permit or applicable rules, including obligations to restore groundwater and to plug and abandon wells in accordance with the requirements of the permit and applicable rules.

(h) Class V injection wells associated with an aquifer storage and recovery (ASR) project or an aquifer recharge project may be authorized by individual permit, general permit, or by rule. The executive director will notify a groundwater conservation district of an ASR project proposed to be authorized by rule that is located within the jurisdictional boundary of that groundwater conservation district.

*§331.9. Injection Authorized by Rule.*

(a) Plugging and abandonment of a well authorized by rule at any time after January 1, 1982, shall be accomplished in accordance with the standards of §331.46 of this title (relating to Closure Standards). Class V wells shall be closed according to standards under §331.133 of this title (relating to Closure Standards for Injection Wells). Motor vehicle waste disposal wells, large capacity septic systems, large capacity cesspools, subsurface fluid distribution systems, and drywells shall be closed according to standards under §331.136 of this title (relating to Closure Standards for Motor Vehicle Waste Disposal Wells, Large Capacity Septic Systems, Large Capacity Cesspools, Subsurface Fluid Distribution Systems, and Drywells).

(b) Injection into Class V wells, unless otherwise provided in subsection (c) of this section, §331.7 of this title (relating to Permit Required), or §331.137 of this title (relating to Permit for Motor Vehicle Waste Disposal Wells), is authorized under this rule.

(1) Well authorization under this section expires upon the effective date of a permit issued under §331.7 of this title.

(2) An owner or operator of a Class V well is prohibited from injecting into the well:

(A) upon the effective date of permit denial;

(B) upon failure to submit a permit application in a timely manner under subsection (c) of this section;

(C) upon failure to submit inventory information in a timely manner under §331.10 of this title (relating to Inventory of Wells Authorized by Rule);

(D) upon failure to comply with a request for information from the executive director in a timely manner;

(E) upon failure to comply with provisions contained in Subchapter H of this chapter (relating to Standards for Class V Wells) and, if applicable, Subchapter K of this chapter (relating to Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects) or Subchapter O of this chapter (relating to Additional Requirements for Class V Injection Wells Associated with Aquifer Recharge Projects); or

(F) upon failure of the owner or operator to comply with provisions contained in paragraph (3) of this subsection for a Class V well that is authorized to inject certain wastes into a Class II disposal well permitted by the Railroad Commission of Texas.

(3) Unless otherwise provided in subsection (c) of this section, a disposal well authorized by an active Class II permit issued by the Railroad Commission of Texas whose operator has an active Form P-5 Organization Report in good standing with the Railroad Commission of Texas may be authorized by rule of the commission as a Class V injection well for the disposal by injection of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals.

(A) Subchapter H of this chapter and subsection (a) of this section are not applicable to a Class V well authorized by rule under this paragraph.

(B) The use or disposal of radioactive material under this paragraph is subject to the applicable requirements of Chapter 336 of this title (relating to Radioactive Substance Rules).

(c) The executive director may require the owner or operator of an injection well authorized by rule to apply for and obtain an injection well permit. The owner or operator shall submit a complete application within 90 days after the receipt of a letter from the executive director requesting that the owner or operator of an injection well submit an application for permit. Cases for which a permit may be required include, but are not limited to, wells not in compliance with the standards required by this section.

(d) Class IV wells injecting hazardous waste-contaminated groundwater that is of acceptable quality to aid remediation and that is being reinjected into the same formation from which it was drawn, as authorized by §331.6 of this title (relating to Prohibition of Class IV Well Injection), shall be authorized by rule.

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) 293-1806

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## SUBCHAPTER H. STANDARDS FOR CLASS V WELLS

### 30 TAC §331.131

Statutory Authority

This amendment is proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.003, which allows the commission to use all reasonable methods to implement its policy of maintaining the quality of fresh water in the state of Texas; TWC, §27.011, which establishes the commission's jurisdiction over certain injection well permits; TWC, §27.019, which specifically authorizes the commission to adopt rules and procedures necessary for performance of its powers, duties, and functions under TWC, Chapter 27; and House Bill (HB) 720, Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158 and TWC, Chapter 27, Subchapter H.

The proposed amendment implements HB 720.

*§331.131. Applicability.*

This subchapter applies to all Class V injection wells under the jurisdiction of the commission except those Class V wells authorized by rule under §331.9(b)(3) of this title (relating to Injection Authorized by Rule). Aquifer storage and recovery injection wells must also comply with Subchapter K of this chapter (relating to Additional Requirements for Class V Injection Wells Associated with Aquifer Storage and Recovery Projects) in addition to this subchapter. Aquifer recharge injection wells must also comply with Subchapter O of this chapter (relating to Additional Requirements for Class V Injection Wells Associated with Aquifer Recharge Projects) in addition to this subchapter.

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

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## SUBCHAPTER O. ADDITIONAL REQUIREMENTS FOR CLASS V INJECTION WELLS ASSOCIATED WITH AQUIFER RECHARGE PROJECTS

### 30 TAC §§331.262 - 331.267

Statutory Authority

The new sections are proposed under the authority of Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.003, which allows the commission to use all reasonable methods to implement its policy of maintaining the quality of fresh water in the state of Texas; TWC, §27.011, which establishes the commission's jurisdiction over certain injection well permits; TWC, §27.019, which specifically authorizes the commission to adopt rules and procedures necessary for performance of its powers, duties, and functions under TWC, Chapter 27; and House Bill (HB) 720 Section 4, which authorizes and directs the commission to adopt rules implementing TWC, §11.157 and §11.158 and TWC, Chapter 27, Subchapter H.

The proposed new sections implement HB 720.

*§331.262. Applicability.*

In addition to the requirements of Subchapter H of this chapter (relating to Standards for Class V Wells), the requirements of this subchapter apply to all Class V aquifer recharge projects, whether by means of an injection well or improved sinkhole or cave connected to an aquifer.

*§331.263. Area of Review.*

The area of review for an aquifer recharge (AR) project is the area determined by a radius of at least 1/2 mile from the proposed AR injection well. For an AR project that includes more than one proposed AR injection well, the area of review is the area determined by a radius of at least 1/2 mile from the centroid of the AR injection well field. In the application for authorization, the applicant shall provide information on the activities within the area of review, including the following factors and any adverse interactions between the factors and the AR project:

(1) locations of:

(A) all artificial penetrations that penetrate the injection interval, including but not limited to: water wells and abandoned water wells from commission well files or groundwater district files; oil and gas wells and saltwater injection wells from the Railroad Commission of Texas files; and waste disposal wells/other injection wells from the commission disposal well files; and

(B) springs, quarries, and any other bodies of water, surface or subsurface features that connect to the injection interval;

(2) completion and construction information, where available, for identified artificial penetrations;

(3) site-specific, significant geologic features, such as faults and fractures;

(4) land surface elevations for projects used to mitigate subsidence;

(5) land use in the drainage basin and geographic extent of the drainage basin for projects using improved sinkholes and caves; and

(6) all information required for the consideration of an AR injection well under §331.267(a) of this title (relating to Additional Requirements).

*§331.264. Construction and Closure Standards.*

All Class V aquifer recharge (AR) injection wells shall be designed, constructed, completed, and closed to prevent commingling, through the wellbore and casing, of injection waters with other fluids outside of the authorized injection zone; mixing through the wellbore and casing of fluids from aquifers of substantively different water quality; and infiltration through the wellbore and casing of water from the surface into groundwater zones.

(1) Plans and specifications. Except as specifically required in the terms of the Class V AR injection well authorization, the drilling and completion of a Class V AR injection well shall be done in accordance with the requirements of §331.132 of this title (relating to Construction Standards) and the closure of a Class V AR injection well shall be done in accordance with the requirements of §331.133 of this title (relating to Closure Standards for Injection Wells).

(A) If the project operator proposes to change the injection interval to one not reviewed and approved during the authorization process, the project operator shall notify the executive director immediately. The project operator may not inject into any unauthorized zone without prior written approval from the executive director.

(B) The executive director shall be notified immediately of any other changes, including but not limited to, changes in the completion of the AR injection well, changes in the setting of screens, and changes in the injection intervals within the authorized injection zone.

(2) Construction materials. Casing materials for Class V AR injection wells shall be constructed of materials resistant to corrosion.

(3) Construction and workover supervision. All phases of any AR injection well construction, workover or closure shall be supervised by qualified individuals who are knowledgeable and experienced in practical drilling engineering, as applicable, and who are familiar with the special conditions and requirements of injection well and water well construction.

*§331.265. Operating Requirements.*

(a) All Class V aquifer recharge (AR) injection wells shall be operated in such a manner that injection will not endanger drinking water sources. Underground injection endangers drinking water sources if such injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation, or may otherwise adversely affect the health of persons.

(b) Injection pressure and volume at the wellhead shall not exceed a maximum which shall be calculated so as to assure the pressure and volume in the injection zone does not cause movement of fluid out of the injection zone.

(c) The owner or operator of an AR injection well that has ceased operations for more than two years shall provide verification of the well's mechanical integrity and notification of intent to resume operations to the executive director at least 30 days prior to resuming operation of the well.

(d) The owner or operator shall maintain the mechanical integrity of all wells operated under this section.

(e) The quality of the water injected at an AR injection well must meet the requirements in §331.267(a)(1) of this title (relating to Additional Requirements).

(f) All AR injection wells must be installed with a flow meter for measuring the volume of water injected.

*§331.266. Monitoring and Reporting Requirements.*

(a) An aquifer recharge (AR) project operator shall monitor each AR injection well associated with an AR project. Each calendar year the project operator shall provide the executive director a written report of the following information for the previous year:

(1) the volume of water injected for recharge; and

(2) other information as determined by the executive director as necessary for the protection of underground sources of drinking water.

(b) At least on an annual basis and each time the source changes, an AR project operator shall perform water-quality testing on water to be injected at an AR injection well. All environmental laboratory analyses shall be performed by laboratories accredited under the Texas Laboratory Accreditation Program using National Environmental Laboratory Accreditation Conference standards. The AR project operator shall provide to the executive director a written report of the results of this testing. The report shall include the test results for all water-quality parameters identified in the individual permit, general permit, or authorization by rule.

*§331.267. Additional Requirements.*

(a) The executive director or commission shall consider the following before issuing an individual permit, a general permit, or an authorization by rule for an aquifer recharge (AR) injection well:

(1) whether the injection of water will comply with the standards set forth under the federal Safe Drinking Water Act (42 United States Code, §§300f, *et seq);*

(2) the effect of the AR project on existing water wells;

(3) the effect of the AR project on existing springs and other surface features that connect to the injection interval; and

(4) whether the introduction of water into the receiving geologic formation will alter the physical, chemical, or biological quality of the native groundwater to a degree that would:

(A) render the groundwater produced from the receiving formation harmful or detrimental to people, animals, vegetation, or property; or

(B) require an unreasonably higher level of treatment of the groundwater produced from the receiving geologic formation than is necessary before AR project initiation for the native groundwater to render the groundwater suitable for beneficial use.

(b) Upon completion of an AR injection well, the following information, as applicable, shall be submitted to the executive director within 30 days of receipt of the results of all analyses and test results:

(1) as-built drilling and completion data on the well;

(2) all logging and testing data on the well;

(3) formation fluid analyses;

(4) injection fluid analyses;

(5) injectivity and pumping tests determining well capacity and reservoir characteristics;

(6) hydrogeologic modeling, with supporting data, predicting the results of injection fluid interaction with the receiving formation and the native groundwater, and predicting injection fluid movement; and

(7) other information as determined by the executive director as necessary for the protection of underground sources of drinking 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.

Filed with the Office of the Secretary of State on November 22, 2019.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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# CHAPTER 331. UNDERGROUND INJECTION CONTROL

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §331.19

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §331.19.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking implements Senate Bill (SB) 483 and SB 520, 86th Texas Legislature, 2019, addressing the commission's regulation of certain injection wells in portions of the Edwards Aquifer and the storage and recovery of water in portions of the Edwards Aquifer. SB 483 revises the definition of "Edwards Aquifer" for a certain portion of Texas, expands commission authorization mechanisms to include rule and individual permit, adds to the permissible sources of injected water, and revises risk assessment requirements. SB 520 adds to the permissible sources of injected water in certain portions of the Edwards Aquifer and limits injection of those added sources to utilities owned by the City of New Braunfels.

Section 331.19 currently addresses injection into or through the Edwards Aquifer and must be revised to implement the changes enacted by SB 483 and SB 520.

Section Discussion

In addition to adopting amendments to implement SB 483 and SB 520, the commission adopts grammatical, stylistic, and various other non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

*§331.19, Injection Into or Through the Edwards Aquifer*

The commission proposes §331.19(a)(4) to allow authorization of Class V wells operated by a City of New Braunfels-owned utility that inject water meeting certain requirements into a portion of the Edwards Aquifer as established by SB 520 in Texas Water Code (TWC), §27.051(i)(3).

The remaining changes are proposed to implement changes specified in SB 483.

The commission proposes to amend §331.19(b) to establish the applicability of the definition of "Edwards Aquifer" within the section.

The commission proposes to amend §331.19(c) to describe the geographic area applicable to §331.19(c), as described in TWC, §27.0516(b).

The commission proposes to remove Figure: 30 TAC §331.19(c) because illustrating the areas where the requirements of §331.19(c) apply is no longer necessary as SB 483 revised the area to apply to the entire geographic area within the boundaries of the Barton Springs-Edwards Aquifer Conservation District but not within the jurisdiction of the Edwards Aquifer Authority.

The commission proposes §331.19(c)(1), (2), and (3)(A) to incorporate the revisions to authorization mechanisms, exclusions for the geographic area described in §331.19(c), and definition of "Edwards Aquifer", as established in TWC, §27.0516(f); TWC, §27.0516(b); and TWC, §27.0516(a)(1), respectively. As a result, existing paragraphs or subparagraphs are proposed to be renumbered or re-lettered accordingly.

The commission proposes to amend renumbered §331.19(c)(5) to add the authorization mechanisms of "rule" and "individual permit," as established in TWC, §27.0516(f), for the geographic area described in §331.19(c).

The commission proposes §331.19(c)(5)(E)(i) - (v) to provide the detailed requirements, as established in TWC, §27.0516(f)(5), for injection wells that transect and isolate the Edwards Aquifer for the injection of certain water from a public water system as part of an aquifer storage and recovery facility.

The commission proposes to amend renumbered §331.19(c)(7)(A)(i) and (ii) to allow monitoring for the geographic area described in §331.19(c) to be performed by "one or more" monitoring wells, rather than "a monitor well," to conform to TWC, §27.0516(h)(1).

The commission proposes §331.19(c)(8) to provide more details, as established in TWC, §27.0516(k) and (n), of the requirements for the injection projects under §331.19(c)(5)(B), (C), or (E) that may be authorized by rule, individual permit, or general permit.

The commission proposes §331.19(c)(9) to prescribe that authorizations under §331.19(c)(5)(B) or (C) must require monitoring reports be filed with the executive director at least every three months, as established in TWC, §27.0516(h)(5).

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 is required to comply with the changes to state law which address injection into or through the Edwards Aquifer.

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 compliance with state law and the possibility for an encouraging effect on the initiation of aquifer storage and recovery projects in the region. It expands the range of allowable injection projects in the Edwards Aquifer geographic area, but it does not require injection projects to be initiated.

The proposed rulemaking is not anticipated to result in adverse 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 affected geographic area includes all or part of the following counties: Bexar, Comal, Hays, Kendall, Kinney, Medina, Travis, Uvalde, and Williamson.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

The proposed rule would allow the commission to authorize underground injection that is currently prohibited. The commission is not aware of any known small or micro-businesses performing injections at the present time.

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 would 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 expand an existing regulation by allowing the commission to authorize the underground injection as authorized by state law and would increase the number of individuals subject to its applicability. During the first five years, the proposed rule should not significantly impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed action implements SB 483 and SB 520 which revise requirements for certain types of injection in the Edwards Aquifer. The proposal does not meet the definition of "Major environmental rule" because the rulemaking does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The new requirements for injection wells apply only to a specific geographic area within state, and no injection well authorized by the commission may allow the movement of fluid that would result in the pollution of an underground source of drinking water.

Furthermore, the proposed rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The proposed rule does not exceed a standard set by federal law, because there is no comparable federal law regarding injection wells in the Edwards Aquifer. The proposed rule does not exceed an express requirement of state law because it is consistent with the requirements of SB 483 and SB 520 and TWC, §27.051(i) and §27.0516. The proposed rule does not exceed requirements set out in the commission's Underground Injection Control program authorized for the state of Texas under the federal Safe Drinking Water Act. The rulemaking is not proposed under the general powers of the agency and is proposed under the express requirements of TWC, §27.019 and §27.0516(h).

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

Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The proposed action implements legislative requirements in SB 483 and SB 520, which authorizes certain types of injection wells and establishes requirements for injection wells within the Edwards Aquifer.

The proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule would allow certain injection wells in the Edwards Aquifer as provided under SB 483 and SB 520. The proposed rule does not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to real property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 14, 2020, 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 Ms. 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 2019-117-331-WS. The comment period closes on January 21, 2020. 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 Carol Dye, Underground Injection Control Permits Section, at (512) 239-1504.

Statutory Authority

The amended section is proposed under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and TWC, §27.0516(h), which authorizes the commission to adopt rules regarding injection wells in the Edwards Aquifer.

The amended section implements Senate Bill (SB) 483 and SB 520, 86th Texas Legislature, 2019, and TWC, §27.051 and §27.0516, which establish requirements for certain injection wells in the Edwards Aquifer.

*§331.19. Injection Into or Through the Edwards Aquifer.*

(a) Except as authorized in subsection (c) of this section, for applications submitted on or after September 1, 2001, injection wells that transect or terminate in the Edwards Aquifer may be authorized by rule under §331.9 of this title (relating to Injection Authorized by Rule) or by permit only as follows:

(1) wells that inject groundwater withdrawn from the Edwards Aquifer may be authorized only if:

(A) the groundwater is unaltered physically, chemically, or biologically; or

(B) the groundwater is treated in connection with remediation that is approved by state or federal order, authorization, or agreement and does not exceed the maximum contaminant levels for drinking water contained in §290.104 of this title (relating to Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels);

(2) wells that inject non-toxic tracer dyes into the Edwards Aquifer for the purpose of conducting scientific studies to determine hydrologic flowpaths may be authorized if the owner or operator is a federal or state agency, county, municipality, river authority, or groundwater district; [~~or~~]

(3) improved sinkholes or caves located in karst topographic areas that inject storm water, flood water, or groundwater may be authorized; and [.]

(4) wells that terminate in a portion of the Edwards Aquifer that contains groundwater with a total dissolved solids (TDS) concentration of more than 5,000 milligrams per liter, and:

(A) the water is injected by a utility owned by the City of New Braunfels;

(B) the injected water has a TDS of less than 1,500 milligrams per liter and is not domestic wastewater, municipal wastewater, or reclaimed water as defined by Chapter 210 of this title (relating to Use of Reclaimed Water);

(C) if the injected water is state water, the utility has a water right or contract for use of the water that does not prohibit use of the water in an aquifer storage and recovery project; and

(D) the injection of the water complies with the requirements of Subchapter K of this chapter (relating to Additional Requirements for Class V Injection Wells Associated With Aquifer Storage and Recovery Projects).

(b) For the purposes of subsection (a) of this section, Edwards Aquifer means that portion of an arcuate belt of porous, water-bearing limestones composed of the Edwards Formation, Georgetown Formation, Comanche Peak Formation, Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person

Formation, Kainer Formation, and Edwards Group trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, Hays, Travis, and Williamson Counties. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(c) This subsection applies only to the portion of the Edwards Aquifer that is within the geographic area circumscribed by the external boundaries of the Barton Springs-Edwards Aquifer Conservation District [~~(BSEACD)~~] but is not in the jurisdiction [~~that district's territory or the territory~~] of the Edwards Aquifer Authority. [~~The jurisdictional boundaries of the BSEACD are delineated in orders of the commission dated November 19, 1986 and April 18, 1988; in two subsequent orders of the BSEACD dated August 13, 1987; three orders of the BSEACD dated January 24, 2002; an order of the BSEACD canvassing the returns and declaring the results of a special election, dated November 12, 2002; and in a resolution of the BSEACD adopted June 23, 2011. A general depiction of the geographic area affected by this subsection is shown in the figure in this subsection. Unless authorized by rule as provided in paragraph (2) of this subsection or authorized by a general permit issued by the commission as provided in paragraph (3) of this subsection, all injection wells within the geographic area described in this subsection are prohibited.~~]
[~~Figure: 30 TAC §331.19(c)~~]

(1) Unless authorized by rule as provided in paragraph (4) of this subsection or authorized by rule, individual permit, or general permit issued by the commission as provided in paragraph (5) of this subsection, all injection wells within the geographic area described in this subsection are prohibited.

(2) This subsection does not apply to a wastewater facility permitted under Texas Water Code (TWC), Chapter 26 or a subsurface area drip dispersal system permitted under TWC, Chapter 32.

(3) [~~(1)~~] Definitions. For the purposes of this subsection:

(A) Edwards Aquifer--That portion of an arcuate belt of porous, water-bearing limestones composed of the Edwards Formation, Georgetown Formation, Comanche Peak Formation, Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, and Edwards Group, together with the Upper Glen Rose Formation where scientific studies have documented a hydrological connection to the overlying Edwards Group trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, Hays, Travis, and Williamson Counties. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(B) [~~(A)~~] Engineered aquifer storage and recovery facility--A facility with one or more wells that is located, designed, constructed, and operated for the purpose of injecting fresh water into a subsurface permeable stratum and storing the water for subsequent withdrawal and use for a beneficial purpose.

(C) [~~(B)~~] Fresh water--Surface water or groundwater, without regard to whether the water has been physically, chemically, or biologically altered, that:

*(i)* contains a total dissolved solids concentration of not more than 1,000 milligrams per liter; and

*(ii)* is otherwise suitable as a source of drinking water supply.

(D) [~~(C)~~] Saline portion of the Edwards Aquifer--The portion of the Edwards Aquifer that contains groundwater with a total dissolved solids concentration of more than 1,000 milligrams per liter.

(4) [~~(2)~~] Injection wells authorized by rule. Injection wells within the geographic area described within this subsection may be authorized by rule under §331.9 of this title for:

(A) the injection of fresh water withdrawn from the Edwards Aquifer into a well that transects or terminates in the Edwards Aquifer for the purpose of providing additional recharge; or

(B) the injection of rainwater, storm water, flood water, or groundwater into the Edwards Aquifer by means of an improved natural recharge feature such as a sinkhole or cave located in a karst topographic area for the purpose of providing additional recharge.

(5) [~~(3)~~] Injection wells authorized by rule, individual permit, or general permit. Injection wells within the geographic area described in this subsection may be authorized under a rule, individual permit, or general permit issued by the commission. A rule, individual permit, or general permit under this paragraph may authorize:

(A) an activity described under paragraph (4) [~~(2)~~] of this subsection;

(B) an injection well that transects and isolates the saline portion of the Edwards Aquifer and terminates in a lower aquifer for the purpose of injecting:

*(i)* concentrate from a desalination facility; or

*(ii)* fresh water as part of an engineered aquifer storage and recovery facility;

(C) an injection well that terminates in that part of the saline portion of the Edwards Aquifer that has a TDS [~~total dissolved solids~~] concentration of more than 10,000 milligrams per liter for the purpose of injecting into the saline portion of the Edwards Aquifer:

*(i)* concentrate from a desalination facility, provided that the injection well must be at least three miles from the closest outlet of Barton Springs; or

*(ii)* fresh water as part of an engineered aquifer and storage recovery facility, provided each well used for injection or withdrawal from the facility must be at least three miles from the closest outlet of Barton Springs; [~~or~~]

(D) an injection well that transects or terminates in the Edwards Aquifer for:

*(i)* aquifer remediation;

*(ii)* the injection of a nontoxic tracer dye as part of a hydrologic study; or

*(iii)* another beneficial activity that is designed and undertaken for the purpose of increasing protection of an underground source of drinking water from pollution or other deleterious effects; or [~~.~~]

(E) an injection well that transects the Edwards Aquifer for the purpose of injecting fresh water provided that:

*(i)* the well isolates the Edwards Aquifer and meets the construction standards in §331.183 of this title (relating to Construction and Closure Standards);

*(ii)* the well is part of an engineered aquifer storage and recovery facility;

*(iii)* the injected water is sourced from a public water system, as defined in §290.38 of this title (relating to Definitions), that is permitted by the commission;

*(iv)* the injected water meets water quality standards for public drinking water established in Chapter 290 of this title (relating to Public Drinking Water); and

*(v)* the injection complies with the provisions of Subchapter K of this chapter that are not in conflict with this section.

(6) [~~(4)~~] The commission must hold a public meeting before issuing a general permit under this section.

(7) [~~(5)~~] Special requirements for all injection wells subject to this subsection.

(A) Monitoring wells. An injection well subject to this subsection must be monitored by means of:

*(i)* one or more [~~a~~] monitoring wells [~~well~~] operated by the injection well owner if the executive director determines that there is an underground source of drinking water in the area of review that is potentially affected by the injection well; or

*(ii)* if clause (i) of this subparagraph does not apply, one or more [~~a~~] monitoring wells [~~well~~] operated by a party other than the injection well owner, provided that all results of monitoring are promptly made available to the injection well owner.

*(iii)* A monitoring well described under this subparagraph, if properly sited and completed, may also be used for monitoring a saline water production well.

(B) An injection well subject to this subsection:

*(i)* must not result in the waste or pollution of fresh water; and

*(ii)* may be authorized for a term not to exceed ten years, and the authorization for the injection well may be renewed.

(8) An authorization by rule, individual permit, or general permit under paragraph (5)(B), (C), or (E) of this subsection:

(A) must initially be associated with a small-scale research project designed to evaluate the long-term feasibility of the injection of concentrate from a desalination facility; or an aquifer storage and recovery project;

(B) may be continued following completion of the research project if:

*(i)* the research project information is submitted to the commission in a timely schedule;

*(ii)* adequate characterization of risks to the fresh water portion of the Edwards Aquifer, the fresh water portion of formations in the Trinity Group or other fresh water demonstrates to the commission's satisfaction that continued operation or continued operations with commission-approved well modifications or operational controls does not pose unreasonable risk to the fresh water portion of the Edwards Aquifer, the fresh water portion of formations in the Trinity Group, or other fresh water; and

*(iii)* the commission receives a notice of intent to continue operation at least 90 days before initiation of commercial well operations.

(9) Authorization under paragraph (5)(B) or (C) of this subsection must require monitoring reports be filed with the executive director at least every three months.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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# CHAPTER 352. COAL COMBUSTION RESIDUALS WASTE MANAGEMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§352.1 - 352.6, 352.101, 352.111, 352.121, 352.131, 352.141, 352.201, 352.211, 352.221, 352.231, 352.241, 352.251, 352.261, 352.271, 352.281, 352.291, 352.301, 352.311, 352.401, 352.411, 352.421, 352.431, 352.441, 352.451, 352.461, 352.471, 352.481, 352.601, 352.611, 352.621, 352.631, 352.641, 352.701, 352.711, 352.721, 352.731, 352.741, 352.801, 352.811, 352.821, 352.831, 352.841, 352.851, 352.901, 352.902, 352.911, 352.931, 352.941, 352.951, 352.961, 352.971, 352.981, 352.991, 352.1101, 352.1111, 352.1200, 352.1201, 352.1211, 352.1221, 352.1231, 352.1241, 352.1301, 352.1311, 352.1321, 352.1401, 352.1421, and 352.1431.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to create a program to regulate owners and operators of landfills and surface impoundments used for the disposal or management of coal combustion residuals (CCR), a nonhazardous industrial solid waste generated from the combustion of coal by electric utilities and independent power producers. If adopted, these rules would be eligible for United States Environmental Protection Agency (EPA) approval and would operate in Texas in lieu of the EPA CCR program. The EPA promulgated self-implementing requirements for the regulation of CCR disposed of or managed in certain landfills and surface impoundments, under the United States Resource Conservation and Recovery Act, 40 Code of Federal Regulations (CFR) Part 257, Subpart D (Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments). After the effective date of 40 CFR Part 257, Subpart D, the United States Congress passed the Water Infrastructure for Improvements to the Nation (WIIN) Act in December 2016. The WIIN Act provides that states may create a permitting program or other system of prior approval that, if approved by the EPA, would operate in lieu of the new federal CCR rule. The commission proposes new Chapter 352 to create a state program eligible for EPA approval to operate in lieu of federal CCR requirements, as provided in the WIIN Act.

The 85th Texas Legislature passed the Texas General Appropriations Act (Act) on June 12, 2017. The Act contained a rider to fund four new full-time equivalent (FTE) employee positions for the commission to create and implement a CCR program.

New Chapter 352 would establish a CCR management program that would be at least as protective as the requirements of the self-implementing federal CCR rules. The new chapter would require owners and operators to obtain a registration, establish compliance monitoring, and maintain compliance with the standards listed under new Chapter 352 for landfills and surface impoundments used to dispose of or manage CCR. Under new Chapter 352, the executive director may issue a registration to owners and operators authorizing certain CCR activities pursuant to application submittal, technical review, and approval. The new chapter would provide opportunities for public participation before issuance of a CCR registration. The public participation process would include an opportunity for the public to review and comment on the application and executive director's draft registration, as well as an opportunity to request a public meeting. The new chapter would establish a CCR management program by adopting parts of the federal rule by reference, calling out parts of the federal rule in prose, relying on existing commission rules and procedures, and where necessary, creating new requirements. The commission anticipates relying upon EPA guidance in implementing this new regulatory structure.

The commission is specifically soliciting comments from the public on what should be the effective date of proposed Chapter 352.

If new Chapter 352 is adopted, the commission would then seek approval from the EPA for new Chapter 352 to operate in lieu of the federal CCR rule.

Section by Section Discussion

*Subchapter A: General Provisions*

*§352.1, Applicability*

The commission proposes new §352.1 to describe the various persons, activities, and units for which the new CCR program would or would not apply. New §352.1 would establish the applicability of proposed new Chapter 352 consistent with the applicability and intent of 40 CFR Part 257, Subpart D, by utilizing the language of 40 CFR §257.50 (Scope and purpose), and by adding language specific to Texas' waste programs under the Texas Solid Waste Disposal Act and the commission's rules. New Chapter 352 would be applicable to owners and operators of landfills and surface impoundments used for the disposal or management of CCR generated from the combustion of coal at electric utilities and independent power producers. New Chapter 352 would also be applicable to owners and operators of inactive surface impoundments for the disposal or management of CCR at facilities that otherwise continue producing electricity, regardless of the source of fuel currently used; lateral expansions of CCR surface impoundments and landfills; and waste management units located off-site from facilities generating CCR, and otherwise meeting the applicability criteria. New Chapter 352 would not be applicable to owners and operators of existing CCR landfills that stopped receiving CCR, or electric utilities and independent power producers that stopped producing electricity, before the effective date of the federal CCR rules, October 19, 2015; waste generated at facilities not part of an electric utility or independent power producer; waste generated primarily from the combustion of fuels other than coal to generate electricity, unless the fuel consists of more than a 50% coal mass feed rate of coal; CCR placement at active or abandoned underground or surface coal mines; municipal solid waste landfills or commercial industrial nonhazardous waste landfill facilities that receive CCR; or the beneficial use of CCR as defined in 40 CFR §257.53 (Definitions). In addition, consistent with the EPA's intent in the April 17, 2015, issue of the *Federal Register* adopting the final CCR rule, new Chapter 352 "{would} not impose any requirements on any CCR surface impoundments that have in fact "closed" before the {federal} rule's effective date {of October 19, 2015}--i.e., those that no longer contain water and can no longer impound liquid" (80 FR 21343). Further, "CCR surface impoundments do not include units generally referred to as cooling water ponds, process water ponds, wastewater treatment ponds, storm water holding ponds, or aeration ponds" (80 FR 21357).

*§352.2, Applicability of Other Regulations*

The commission proposes new §352.2 to establish that compliance with the requirements of new Chapter 352 would not relieve owners and operators of obligations to comply with federal, state, and local laws and regulations. These would include, but would not be limited to, federal prohibitions and requirements regarding floodplains, endangered species, and surface water under 40 CFR Part 257, Subpart A (Classification of Solid Waste Disposal Facilities and Practices); TCEQ air quality regulations, including, but not limited to, 30 Texas Administrative Code (TAC) Chapter 111 (Control of Air Pollution from Visible Emissions and Particulate Matter) and Chapter 116 (Control of Air Pollution by Permits for New Construction or Modification); 30 TAC Chapter 305 (Consolidated Permits); 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste); and statutory obligations under the Texas Water Code (TWC), including TWC, §26.408 (in relation to Notice of Groundwater Contamination). The commission notes that certain requirements under Chapter 335 would remain applicable to nonhazardous industrial solid waste meeting the definition of CCR under proposed Chapter 352. These requirements would include and would not be limited to 30 TAC §335.6 (Notification Requirements); §335.9 (Recordkeeping and Annual Reporting Procedures Applicable to Generators); §335.13 (Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste); §335.17 (Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials); §335.24 (Requirements for Recyclable Materials and Nonhazardous Recyclable Materials); and Chapter 335, Subchapter R (Waste Classification).

*§352.3, Definitions*

The commission proposes new §352.3 to establish definitions applicable to new Chapter 352 by adopting by reference definitions in 40 CFR §257.53, importing definitions from other commission rules, and creating new definitions.

*§352.4, Engineering and Geoscientific Information*

The commission proposes new §352.4 to require engineering and geoscientific information submitted under new Chapter 352 be prepared by, or under the supervision of, licensed professionals, and submitted in accordance with the Texas Engineering Practice Act and the Texas Geoscience Practice Act.

*§352.5, Laboratory Accreditation and Certification*

The commission proposes new §352.5 to require owners and operators subject to new Chapter 352 to comply with the Environmental Testing Laboratory Accreditation and Certification Program requirements of 30 TAC Chapter 25 (Environmental Testing Laboratory Accreditation and Certification).

*§352.6, General Prohibitions*

The commission proposes new §352.6 to prohibit any person from causing, suffering, or allowing the collection, handling, stor-

age, processing, management, or disposal of CCR in a way that causes the discharge, or imminent threat of discharge, of CCR into or adjacent to waters of the state without prior authorization from TCEQ; creates and maintains a nuisance; or endangers public health or welfare.

*Subchapter B: Registration Conditions*

*§352.101, Registration Required*

The commission proposes new §352.101(a) to require owners or operators that manage or dispose of CCR in regulated units to file an application for a registration under new Chapter 352. Owners or operators of a regulated CCR unit must submit an application within 365 days of the effective date of new Chapter 352. Because 40 CFR Part 257, Subpart D, is effective, the commission expects existing facility owners and operators to continue to comply with 40 CFR Part 257, Subpart D, and applicable provisions in new Chapter 352, prior to issuance of a registration.

The commission solicits comments from the public on the timing of when an application for a registration should be filed by an owner or operator given the difference between the effective date of proposed Chapter 352 and the anticipated date of the EPA's approval of the state's CCR program.

The commission proposes new §352.101(b) to prohibit the management or disposal of CCR in a new or laterally expanding CCR unit unless authorized by a registration issued under new Chapter 352.

The commission proposes new §352.101(c) to clarify that one registration would be issued for one or more CCR units located on contiguous property.

*§352.111, Registration Characteristics and Conditions*

The commission proposes new §352.111 to establish standard registration conditions. The commission would accomplish this purpose by requiring the executive director to include the applicable characteristics and conditions included in authorizations issued by the commission under 30 TAC Chapter 305, Subchapter F (Permit Characteristics and Conditions).

*§352.121, Duration*

The commission proposes new §352.121 to identify the duration of the registration as the active life of the CCR unit as well as any post-closure maintenance period, unless the registration is revoked or amended for a failure to meet minimum standards or for any other good cause.

*§352.131, Amendments*

The commission proposes new §352.131 to establish procedures to amend an existing registration. Section 352.131 would establish that changes to an existing registration require prior approval by the executive director, that applications to amend a registration would be classified as major or minor amendments under 30 TAC §305.62 (Amendments), and would require amendment applications to include the applicable application contents identified in proposed new Chapter 352, Subchapter C (Registration Application Contents).

Proposed new §352.131(b) would classify registration amendments as either major amendments or minor amendments, as described in Chapter 305. Major amendments are described in §305.62(c)(1) as "an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit." Major amendments initiated under new Chapter 352 would be subject to the public participation requirements of new §§352.431, 352.441, 352.451, and 352.461 (Public Notice of Application; Revised Notice of Changes to Application; Public Meeting; and General Notice Provisions), prescribing an opportunity for public participation in these amendments. Minor amendments are described in §305.62(c)(2) as "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." An amendment classification as major or minor would require the approval of the executive director. Additionally, §352.131(b) would establish that 30 TAC §305.69 (Solid Waste Permit Modification at the Request of the Permittee) is not applicable to registrations under proposed new Chapter 352, that an amendment application will be processed under new Chapter 352 and not 30 TAC Chapter 281 (Applications Processing), and that changes initiated by the executive director would be classified and processed as major or minor amendments and not as modifications.

For clarity regarding the applicability of Chapter 305, including §305.62, the definition of a "permit" in Chapter 305 includes a "registration" under proposed new Chapter 352.

*§352.141, Issuance and Transfer*

The commission proposes new §352.141 to establish that a registration would be issued to the person who is the owner and operator or the operator of the subject CCR facility; that a registration may not be transferred without prior approval of the executive director; and that a registration may not be transferred between facilities at different physical locations. The commission proposes to accomplish these purposes by requiring an owner or operator to apply for a registration transfer utilizing the procedures of 30 TAC §305.64 (Transfer of Permits) and by establishing that a registration is attached to the real property to which it pertains.

*Subchapter C: Registration Application Contents*

*§352.201, Application Required*

The commission proposes new §352.201 to require an owner or operator requesting a registration, or registration amendment, to use the forms provided by, and in the manner required by, the executive director.

*§352.211, Who Applies*

The commission proposes new §352.211 to identify the person required to apply for a registration under new Chapter 352.

*§352.221, Signatories to Applications*

The commission proposes new §352.221 to identify authorized signatories of applications submitted under new Chapter 352.

*§352.231, General Application Requirements*

The commission proposes new §352.231 to establish the components of the application required by new §352.201 (Application Required), including facility and unit information and documentation, technical reports, professional certifications and their accompanying reports, relevant maps, property owner information, verification that the CCR unit meets the requirements of new §352.2, and other information necessary for the executive direc-

tor to draft and issue a registration. A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with §352.4, where required. Additionally, §352.231 would require the application to include the supporting documentation and technical reports relied on by a licensed professional geoscientist or licensed professional engineer; and establish an application fee of $150.

*§352.241, Geology*

The commission proposes new §352.241 to require the owner or operator to provide a summary of the geologic conditions at the facility with the application required by new §352.201 that includes information and documentation necessary for the executive director to assess geological conditions at the facility in relation to the CCR unit, and draft and issue a registration. At a minimum, the summary must include supporting information used in creating the summary; all groundwater monitoring data required by 40 CFR Part 257, Subpart D; and information required by new §§352.601, 352.621, 352.631, and 352.641 (Placement Above the Uppermost Aquifer; Fault Areas; Seismic Impact Zones; and Unstable Areas). A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.

*§352.251, Location Restriction Application Submission*

The commission proposes new §352.251 to require the owner or operator to provide documentation with an application demonstrating compliance with the applicable location restrictions in new Chapter 352, Subchapter E (Location Restrictions). A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.

*§352.261, Design Criteria Application Submission*

The commission proposes new §352.261 to require the owner or operator to provide documentation with an application demonstrating compliance with the design criteria in new Chapter 352, Subchapter F (Design Criteria). The owner or operator shall submit the applicable documentation and information for the liner design and specifications for each unit, the leachate detection system specifications for each landfill, plans and profile drawings for each unit, and all structural integrity information for each surface impoundment. A licensed professional engineer must sign and seal documentation in accordance with new §352.4, where required.

For new and laterally expanding CCR units, subsurface soil information is required to be submitted with the application. The information provided must include a description of all borings drilled with a unit map and boring logs, cross-sections depicting the generalized strata, and a description of geotechnical data and properties of subsurface soil materials. A licensed professional geoscientist or licensed professional engineer must sign and seal the documentation in accordance with new §352.4, where required.

*§352.271, Operating Criteria Application Submission*

The commission proposes new §352.271 to require the owner or operator to provide documentation with an application demonstrating compliance with the operating criteria in new Chapter 352, Subchapter G (Operating Criteria). The owner or operator shall submit the documentation and information as required for the CCR fugitive dust control plan, the run-on and run-off controls for CCR landfills, the inflow design and flood control system plans for CCR surface impoundments, including a description of the hydrologic method and calculations used to estimate peak flow rates required for the inflow design flood control system based on the surface impoundment hazard potential, and any current annual inspection reports required for all units. A licensed professional engineer must sign and seal documentation in accordance with new §352.4, where required.

*§352.281, Groundwater Monitoring and Corrective Action Application Submission*

The commission proposes new §352.281 to require the owner or operator to provide documentation with the application demonstrating compliance with the groundwater monitoring and corrective action program criteria in new Chapter 352, Subchapter H (Groundwater Monitoring and Corrective Action). The owner or operator shall submit documentation and information for the initial and most recent annual groundwater monitoring and corrective action reports, groundwater monitoring systems, and groundwater sampling and analysis program; and identify the monitoring program type the unit is currently following. If the facility has made an alternate source demonstration at or before the time of the application, the most recent demonstration must be included in the application. A licensed professional geoscientist or licensed professional engineer must sign and seal information and documentation in accordance with new §352.4, where required.

*§352.291, Demonstration of No Migration Submission*

The commission proposes new §352.291 to require an owner or operator seeking a suspension of groundwater monitoring requirements based on a demonstration of no migration potential, to submit the demonstration with an application for a registration or registration amendment. The executive director shall review the demonstrations and issue a denial or concurrence. Owners or operators of CCR units that make a successful demonstration must repeat the demonstration and request no later than every ten years from the date of initial approval.

*§352.301, Closure and Post-Closure Care Application Submission*

The commission proposes new §352.301 to require the owner or operator to provide documentation with the application demonstrating compliance with the requirements in new Chapter 352, Subchapter J (Closure and Post-Closure Care), including copies of the closure and post-closure plans. A licensed professional geoscientist or licensed professional engineer must sign and seal documentation in accordance with new §352.4, where required.

Proposed new §352.301(b) would require an owner or operator to submit a post-closure care cost estimate. The estimate must be based upon the cost of hiring a third-party to perform post-closure maintenance requirements that would be adopted by reference in proposed §352.1241. Post-closure maintenance requirements include maintaining the final cover system, the leachate collection and removal system, if applicable, and the groundwater monitoring system. The estimate would be used for establishing financial assurance as required in proposed new Chapter 352, Subchapter I (Financial Assurance).

*§352.311, Retention of Application Data*

The commission proposes new §352.311 to require the owner or operator to retain records of all data and supplemental information used to complete the final application for the term of the

registration, which in this case is the active life of the unit and any post-closure care period.

*Subchapter D: Registration Application Procedures*

*§352.401, Application Deficiencies*

The commission proposes new §352.401 to establish procedures for the executive director to notify applicants of deficiencies identified in applications, and a deadline for applicants to provide responses to these notifications. The commission proposes imposing up to a 60-day deadline for an applicant to respond, depending on the extent and nature of the items in the deficiency letter.

*§352.411, Extensions*

The commission proposes new §352.411 to establish a process for applicants to request extensions for responding to notices of application deficiencies. The commission proposes to require applicants to submit written requests for extensions of the response deadline. The request must include the reason an extension is needed and describe the length of the extension being requested. The executive director may grant or deny an extension request.

*§352.421, Applications Returned*

The commission proposes new §352.421 to establish procedures for the executive director to return an incomplete application. The executive director would notify an applicant that the executive director is discontinuing the review of an application, and the application is being returned. An application is considered returned upon issuance of a notice from the executive director that the application is returned. A returned application would not be physically returned to the applicant but would be managed in accordance with the commission's records management procedures.

*§352.431, Public Notice of Application*

The commission proposes new §352.431 to establish public notice and public participation procedures for applications requesting new registrations and major amendments of registrations issued under new Chapter 352.

Proposed new §352.431(a) would establish that the requirements of new §352.431 would be applicable to applications for new CCR registrations and major amendments of CCR registrations. Proposed new §352.431(b) would create a notice of the executive director's receipt of, and initial decision on, a registration application, and of opportunities to provide public comment and request a public meeting. The commission would use the applicable public participation procedures of 30 TAC Chapter 39 (Public Notice).

New §352.431(b) would also require the applicant to follow the solid waste notice publication requirements of 30 TAC §39.405(f)(1) and (2) (General Notice Provisions) and 30 TAC §39.418 (Notice of Receipt of Application and Intent to Obtain Permit). These requirements specify publication of the notice must be in the newspaper of largest circulation in the county in which the facility is located or is proposed to be located. If the facility is located, or is proposed to be located, in a municipality, the publication requirements specify publication of the notice in any newspaper of general circulation in the municipality, and in the newspaper of largest general circulation published in the county in which the facility is located or is proposed to be located. If a newspaper is not published in the county, notice would be required to be published in any newspaper of general circulation in the county in which the facility is located or is proposed to be located. These solid waste notice newspaper publication requirements 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. Additionally, if the alternative language publication decision criteria of §39.405(h) are met, new §352.431(b) would require the applicant to publish notice of an application in an alternative language following the procedures of §39.405(h).

Further, new §352.431(b) would require the executive director to mail a copy of an application made under new Chapter 352, or a summary of its contents, to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the facility is located, or is proposed to be located, and to the county judge and the health authority of the county in which the facility is located, or proposed to be located, by following the procedures of 30 TAC §39.503(c)(2)(B) (Application for Industrial or Hazardous Waste Facility Permit). New §352.431(b) would also require notice of an application under new Chapter 352 be mailed to: the state senator and representative who represent the area in which the facility is, or is proposed to be located; the adjacent landowners named in the application; the Texas Department of State Health Services; the Texas Parks and Wildlife Department; the Railroad Commission of Texas; persons on a relevant mailing list maintained by the chief clerk, which may include persons who have requested to be added to a mailing list and persons who have requested to receive notice of an application; other persons the executive director or chief clerk may elect to include; and if applicable, the secretary of the Coastal Coordination Advisory Committee (formerly the Coastal Coordination Council) in accordance with 30 TAC §§39.413 (Mailed Notice), 39.418(b)(2), and 39.503(c)(1) and (2)(A).

There would not be an opportunity to request a contested case hearing on, and Chapter 281 would not be applicable to, an application for a registration under proposed Chapter 352. Proposed new §352.431(b) would not require notice of an application under new Chapter 352 to comply with the date of administrative completeness requirements of Chapter 281.

Proposed new §352.431(b) would require the text of the notice to include the items listed under 30 TAC §39.411(b) (Text of Public Notice), in accordance with §39.418(b)(3) and §39.503(c)(2)(A). The text of the notice would include, at a minimum: the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain further information; the name, address, and telephone number of the applicant; the application or registration number; a description of the manner in which a person may contact the applicant for further information; a brief description of the location and nature of the proposed activity; a brief description of public comment procedures; a brief description of procedures by which the public may participate in the final registration decision; instructions on how to request a public meeting; an explanation 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 or is proposed to be located, or if there is substantial public interest in the proposed activity; instructions on how to request a motion to overturn the executive director's decision; if applicable, a statement that the application or requested action is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP's goals and policies; the location of 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; a description of the procedure

by which a person may be placed on a mailing list to receive additional information about the application; and any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program.

Proposed new §352.431(c) would require the text of the notice to include the internet address of a website where the application, the executive director's draft registration, and notice required by new Chapter 352 would be available for the public to access.

Proposed new §352.431(d) would require a public comment period of a minimum of 30 days after the publication of the notice in the newspaper.

Finally, proposed new §352.431(e) would require the executive director to take into consideration all public comments received before the close of the public comment period when making the decision to grant or deny an application.

*§352.441, Revised Notice of Changes to Application*

The commission proposes new §352.441 to restrict the applicant from making substantive revisions to the application after public notice is published in the newspaper, without reissuing the public notice with a description of the proposed revisions.

*§352.451, Public Meeting*

The commission proposes new §352.451 to establish public participation procedures for public meetings on applications received under new Chapter 352. The commission would accomplish this by utilizing applicable public participation procedures in Chapter 39 and 30 TAC Chapter 55 (Requests for Reconsideration and Contested Case Hearings; Public Comment).

Proposed new §352.451(a) would allow an applicant and the executive director to hold a public meeting in accordance with 30 TAC §55.154 (Public Meetings), in the county in which the facility is located, or is proposed to be located, for receiving public comment concerning the application and the executive director's draft registration. Additionally, proposed new §352.451(b) would require a public meeting, based on the criteria contained in §§39.503(e), 55.154(c), and 352.961(c) (Assessment of Corrective Measures). The criteria under §39.503(e) and §55.154(c) that would make holding a public meeting mandatory include: a substantial degree of public interest in an application as determined by the executive director and at the request of a member of the legislature who represents the general area in which the facility is located or is proposed to be located. A substantial degree of public interest in an application would also be demonstrated by a request for a public meeting filed by: a local governmental entity with jurisdiction over the location at which the facility is located, or is proposed to be located, by formal resolution of the entity's governing body; a council of governments with jurisdiction over the location at which the facility is located, or is proposed to be located, by formal request of either the council's solid waste advisory committee, executive committee, or governing board; 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 located, or is proposed to be located; or 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, in accordance with §39.503(e). The criteria in new §352.961(c) that would require a public meeting would be either the submission of an initial application that will include corrective action requirements or an application to amend a registration to include corrective action requirements. The purpose of the mandatory public meeting would be to fulfill the requirements of 40 CFR §257.96(e) (Assessment of corrective measures), which would be adopted by reference in proposed §352.961. Facilities that have already met the public meeting requirement of 40 CFR §257.96(e) and are either in the process of selecting the remedy under 40 CFR §257.97 (Selection of remedy) or have begun the implementation of the selected remedy under 40 CFR §257.98 (Implementation of the corrective action program) at the time of application submission, are not required to hold a public meeting under new §352.961(c). A public meeting held prior to application submission to satisfy 40 CFR §257.96(e) will not satisfy the other mandatory public meeting criteria in §39.503(e) and §55.154(c), which may result in a public meeting being required after application submission.

Proposed new §352.451(c) would establish procedures for providing public notice of a public meeting. The commission would require notice be made in accordance with the public notice procedures in §39.503(e)(6) and by requiring notice of a public meeting to be mailed to the persons listed in §39.413. The persons who would receive mailed notice under proposed new §352.451(c) would include the city mayor, county judge, and the city and county health authorities in which the facility is located, or is proposed to be located; the Texas Department of State Health Services; the Texas Parks and Wildlife Department; the Railroad Commission of Texas; the river authority in which the facility is located or is proposed to be located; the applicant; persons on a relevant mailing list maintained by the chief clerk under 30 TAC §39.407 (Mailing Lists); any other person the executive director or chief clerk elected to include, if applicable; the secretary of the Coastal Coordination Advisory Committee (formerly the Coastal Coordination Council); and any persons who filed public comment, requested a public meeting, or requested to be added to the mailing list.

Proposed new §352.451(d) would establish that the purpose of a public meeting is to provide information and to receive public comment, and clarify that a public meeting held on an application submitted under this chapter would not be a contested case hearing under the Texas Administrative Procedure Act.

*§352.461, General Notice Provisions*

The commission proposes new §352.461 to establish general notice procedures of an application for a new registration and a major amendment of a registration submitted under new Chapter 352. The commission would require notice to be made in accordance with established general notice procedures of Chapter 39.

Specifically, proposed new §352.461(a)(1) would require that notice of an application for a new registration and a major amendment of a registration to made in accordance with the applicable requirements of §39.405, which: sets out procedures the chief clerk and the executive director may follow if an applicant fails to publish newspaper notice; allows the chief clerk to require applicants to submit mailing lists in electronic format; provides for hand delivery of notice in lieu of mailed notice; allows multiple notices to be combined into one notice; establishes procedures for the applicant to demonstrate compliance with newspaper notice publication requirements; establishes requirements for a public copy of the application, including confidentiality procedures, be kept current to reflect any changes made to the application; and sets out requirements for publication of newspaper notice in an alternative language, including a decision matrix based on whether the Texas Education Code requires the elementary or middle school nearest to the facility to provide a bilingual education program and other factors.

Proposed new §352.461(a)(2) would require that notice of an application under new Chapter 352 to include the applicable requirements of §39.407, which requires the chief clerk to maintain mailing lists of persons who request to be added to mailing lists and who submit public comments.

Proposed new §352.461(a)(3) would require that notice of an application under new Chapter 352 to include the applicable requirements of 30 TAC §39.409 (Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), which requires notices to identify the close of the public comment period, in accordance with 30 TAC §55.152 (Public Comment Period), and which allows the executive director and the commission to take action on an application after the close of the public comment period under 30 TAC Chapter 50 (Action on Applications and Other Authorizations).

Additionally, proposed new §352.461(a)(3) would require, in accordance with §55.152, that text of public notices of applications under new Chapter 352 to identify the end of the public comment period, allow the executive director to extend the comment period for good cause, and require the comment period to be extended to the close of a public meeting, if a public meeting were held. Proposed new §352.461(a)(4) would require that notice of an application under new Chapter 352 to include the applicable requirements of §39.411; and would require an applicant to use a form of notice approved by the executive director, and any changes to the form of notice to be approved by the executive director.

Proposed new §352.461(a)(5) would require notice of an application under new Chapter 352 to include the applicable requirements of §39.413, which are listed under the Section by Section Discussion for proposed new §352.451(c).

Proposed new §352.461(a)(6) would require notice of an application under new Chapter 352 to include the applicable requirements of 30 TAC §39.420 (Transmittal of the Executive Director's Response to Comments and Decision). Proposed new §352.461(a)(6) would also require the chief clerk to transmit the executive director's final decision, instructions for requesting the commission to overturn the executive director's decision, and if the executive director elected to file a response to public comments, the executive director's response to public comments to the applicant, any person who requested to be on the mailing list for the application, any person who submitted public comments during the public comment period, and the Office of the Public Interest Counsel.

Finally, proposed new §352.461(b) would clarify that the executive director is not required to provide a response to public comments received on applications under new Chapter 352, Subchapter D. Instead, the commission anticipates preparing an informal response to comments responding to all relevant and material comments received prior to the end of the comment period. The informal response to comments will be mailed to all commenters and other relevant parties as part of the final notice of the executive director's action on the application. Proposed new §352.461(b) would also indicate that new Chapter 352, Subchapter D, does not create an opportunity to request the commission to hold a contested case hearing under the Texas Administrative Procedure Act on an application filed under new Chapter 352.

*§352.471, Draft Registration*

The commission proposes new §352.471 to assure that the public notice of an application under new Chapter 352 would include notice of a draft registration available to the public for review and comment. The commission would establish that the executive director would produce a draft registration upon reaching an initial determination that an application for a new registration or an application for major amendment of a registration filed under new Chapter 352 met the regulatory requirements for issuance. Public availability is required by new §352.1321 (Publicly Accessible Internet Site Requirements), which requires the applicant to post a copy of the draft registration on the publicly accessible CCR website once the executive director's initial determination is made.

*§352.481, Motion to Overturn the Executive Director's Decision*

The commission proposes new §352.481 to provide an administrative remedy for review of the executive director's action on an application filed under new Chapter 352. The commission proposes to achieve this purpose by making an application for a new registration or an amendment of a registration under new Chapter 352 subject to the established procedures of 30 TAC §50.133(b) and §50.139 (Executive Director Action on Application or WQMP Update; and Motion to Overturn Executive Director's Decision). These procedures would include mailing a final decision and instructions on how to file a motion to overturn the executive director's decision to persons on the mailing list.

*Subchapter E: Location Restrictions*

*§352.601, Placement Above the Uppermost Aquifer*

The commission proposes new §352.601 to establish a location restriction placing a limit on how close the base of a new CCR landfill, laterally expanding CCR landfill, laterally expanding CCR surface impoundment, new CCR surface impoundment, or an existing CCR surface impoundment subject to new Chapter 352, may be to the uppermost aquifer, consistent with the requirements of 40 CFR §257.60 (Placement above the uppermost aquifer). New §352.601 adopts by reference 40 CFR §257.60 which requires that a demonstration of compliance with this location restriction be prepared, signed, and certified by a licensed professional geoscientist or licensed professional engineer; the owner or operator of an existing surface impoundment meet the location restriction by October 17, 2018; recordkeeping and notification requirements, including internet posting of information regarding compliance with the location restriction; and an owner or operator of a new surface impoundment, new landfill, a laterally expanding surface impoundment, and a laterally expanding landfill to demonstrate compliance with the location restriction before placing CCR in the unit. Owners and operators of existing surface impoundments that do not demonstrate compliance with the location restriction by October 31, 2020, must close the unit. The commission would achieve this purpose by adopting by reference 40 CFR §257.60.

*§352.611, Wetlands*

The commission proposes new §352.611 to adopt by reference the location restrictions included in 40 CFR §257.61 (Wetlands), which prohibits wetland degradation and harm to endangered or threatened species, or critical habitat. These criteria are applicable to new CCR landfills, laterally expanding CCR landfills, laterally expanding CCR surface impoundments, new CCR surface impoundments, or an existing CCR surface impoundment. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet post-

ing requirements of new Chapter 352. Owners and operators of existing surface impoundments that have not complied with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

*§352.621, Fault Areas*

The commission proposes new §352.621 to adopt by reference the location restrictions included in 40 CFR §257.62 (Fault areas), which prohibits the location of a CCR unit in fault areas. These criteria are applicable to new CCR landfills, laterally expanding CCR landfills, laterally expanding CCR surface impoundments, new CCR surface impoundments, or an existing CCR surface impoundment. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners and operators of existing surface impoundments that did not comply with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

*§352.631, Seismic Impact Zones*

The commission proposes new §352.631 to adopt by reference the location restrictions included in 40 CFR §257.63 (Seismic impact zones), which prohibits the location of certain CCR units in seismic impact zones. These criteria are applicable to new CCR landfills, laterally expanding CCR landfills, laterally expanding CCR surface impoundments, new CCR surface impoundments, or an existing CCR surface impoundment. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners and operators of existing surface impoundments that did not comply with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

*§352.641, Unstable Areas*

The commission proposes new §352.641 to adopt by reference the location restrictions included in 40 CFR §257.64 (Unstable areas), which prohibits the location of CCR units in unstable areas. These criteria are applicable to all CCR units, including new and existing CCR landfills, new and existing CCR surface impoundments, and lateral expansions of both unit types. Prohibition to operate a CCR unit in unstable areas is the only location restriction existing landfills are subject to. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners and operators of existing landfills and surface impoundments that did not comply with these restrictions by October 17, 2018, must conduct closure of the unit. Owners and operators of all new and laterally expanding units that do not comply with these restrictions may not conduct waste management activities in the unit.

*Subchapter F: Design Criteria*

*§352.701, Design Criteria for Coal Combustion Residuals Landfills*

The commission proposes new §352.701, to adopt by reference the design criteria included in 40 CFR §257.70 (Design criteria for new CCR landfills and any lateral expansion of a CCR landfill). The design criteria in 40 CFR §257.70 address liner requirements and leachate collection and removal systems for new or laterally expanding CCR landfills. Demonstration of compliance with these requirements must be signed and sealed by a licensed professional engineer both before and after construction. The demonstration must also meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

*§352.711, Liner Design Criteria for Existing Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.711, to establish the liner requirements for existing CCR surface impoundments consistent with the federal liner requirements found under 40 CFR §257.71 (Liner design criteria for existing CCR surface impoundments) and the August 21, 2018, decision to set aside the court order of the clay-liner options by the United States Court of Appeals for the District of Columbia in the matter of *Util. Solid Waste Activities Group v. Envtl. Protec. Agency,* 901 F.3d 414 (D.C. Cir. 2018). A licensed professional engineer must sign and certify the demonstration of compliance with the requirements of proposed §352.711. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. Owners or operators of existing surface impoundments considered unlined by the standards set out in proposed Chapter 352, Subchapter F, and that determine a statistically significant increase above groundwater protection standards according to proposed Chapter 352, Subchapter H, are subject to closure or retrofit requirements in accordance with new Chapter 352, Subchapter J.

*§352.721, Liner Design Criteria for New and Lateral Expansions of Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.721, to adopt by reference the design criteria included in 40 CFR §257.72 (Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment). The design criteria in 40 CFR §257.72 address liner requirements for new or laterally expanding CCR surface impoundments. A licensed professional engineer must sign and certify the demonstration of compliance with these requirements both before and upon completion of construction. The demonstration must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

*§352.731, Structural Integrity Criteria for Existing Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.731, to primarily adopt by reference the design criteria included in 40 CFR §257.73 (Structural integrity criteria for existing CCR surface impoundments). The design criteria in 40 CFR §257.73 imposes structural integrity standards for existing CCR surface impoundments that are not incised. Owners and operators of existing CCR surface impoundments were required to install unit identification number markers by December 17, 2015. Owners and operators of existing CCR surface impoundments must: have conducted an initial hazard potential classification assessment by April 17, 2017, and implemented periodic assessments, in accordance with new Chapter 352, Subchapter F; develop, maintain, and implement a written emergency action plan for impoundments classified as high or significant hazard potential, in accordance

with new Chapter 352, Subchapter F; develop and maintain a construction history for the unit; and have performed initial, and implemented periodic, structural stability and safety factor assessments. Initial assessments and demonstrations must have been made by October 17, 2016. Failure to comply with the minimum safety factor requirements, or the deadline for conducting the assessment, in new §352.731 would require closure of the unit. All required demonstrations and assessments must be certified by a licensed professional engineer, and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, new §352.731(b) would identify specific notifications and notification timelines required by the state in addition to the requirements adopted by reference. Some events requiring notification may also trigger a requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

*§352.741, Structural Integrity Criteria for New and Lateral Expansions of Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.741 to primarily adopt by reference the design criteria included in 40 CFR §257.74 (Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment). The design criteria in 40 CFR §257.74 imposes structural integrity standards for new and laterally expanding CCR surface impoundments that are not incised. Owners and operators of new or laterally expanding CCR surface impoundments must: install unit identification number markers before receiving CCR wastes in the unit; conduct initial and periodic assessments in accordance with new Chapter 352, Subchapter F; develop, maintain, and implement a written emergency action plan for impoundments classified as high or significant hazard potential, in accordance with new Chapter 352, Subchapter F; develop and maintain a construction history for the unit; and perform initial and periodic structural stability and safety factor assessments. Initial assessments and demonstrations must be made before the receipt of CCR wastes into the new or expanded unit. Owners and operators failing to comply with the minimum safety factor requirements in new §352.741 during initial assessment are prohibited from placing CCR waste into the unit. Failure to comply with the minimum safety factor requirements, or the deadline for conducting the assessment, in new §352.741 during periodic assessments will require closure of the unit. All required demonstrations and assessments must be certified by a licensed professional engineer, and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, new §352.741(b) would identify specific notifications and notification timelines required by the state in addition to the requirements adopted by reference. Some events requiring notification may also trigger a requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

*Subchapter G: Operating Criteria*

*§352.801, Air Criteria*

The commission proposes new §352.801, to adopt by reference the operating criteria included in 40 CFR §257.80 (Air criteria), to require owners and operators of all CCR units to: minimize airborne CCR wastes; develop, implement, and maintain a fugitive dust control plan meeting the requirements of 40 CFR §257.80; and have the plan certified by a licensed professional engineer. The plan must have been in place by October 19, 2015, for existing units, or by initial receipt of CCR for new and laterally expanding units. Owners and operators must also prepare an annual fugitive dust control report. All the requirements must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

*§352.811, Run-On and Run-Off Controls for Coal Combustion Residuals Landfills*

The commission proposes new §352.811, to adopt by reference the operating criteria included in 40 CFR §257.81 (Run-on and run-off controls for CCR landfills). Owners and operators of all CCR landfills must develop initial and periodic run-on and run-off control system plans, in accordance with 40 CFR §257.81, and implement and maintain run-on and run-off control systems capable of withstanding volumes associated with a 24-hour, 25-year storm. Plans were required by October 17, 2016, for existing landfills, and no later than initial receipt of CCR wastes in the unit for new and laterally expanding landfills. Plans must be certified by a licensed professional engineer and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

*§352.821, Hydrologic and Hydraulic Capacity Requirements for Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.821, to adopt by reference the operating criteria included in 40 CFR §257.82 (Hydrologic and hydraulic capacity requirements for CCR surface impoundments). Owners and operators of all CCR surface impoundments must develop initial and periodic inflow design flood control system plans in accordance with 40 CFR §257.82. The plan must implement and maintain an inflow design flood control system capable of managing flow into or from the unit of a volume based on the hazard potential classification determination made in accordance with new §352.731 and §352.741. The volumes established in the federal rule are: probable maximum flood for high hazard potential units, 1,000-year flood for significant hazard potential units, 100-year flood for low hazard potential, and 25-year flood for incised impoundments. Plans were required to be completed and placed in the facility's operating record by October 17, 2016, for existing surface impoundments, and no later than initial receipt of CCR wastes in the unit for new and laterally expanding surface impoundments. Plans must be certified by a licensed professional engineer and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

*§352.831, Inspection Requirements for Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.831, to adopt by reference the operating criteria included in 40 CFR §257.83 (Inspection requirements for CCR surface impoundments). Qualified persons must inspect all CCR surface impoundments on a frequency based on the objective of the inspection, and in accordance with 40 CFR §257.83, and must have initiated inspections by October 19, 2015, for existing surface impoundments or at the time of initial receipt of CCR wastes in the unit for new and laterally expanding surface impoundments. All surface impoundments subject to periodic structural stability assessment requirements in new §352.731 and §352.741, require an annual licensed professional engineer's inspection and inspection report in accordance with 40 CFR §257.83, by January 19, 2016, for existing surface impoundments, and no later than 14 months after initial receipt of CCR wastes in the unit for new and laterally expanding surface impoundments. The owner or operator must remedy any release or deficiency identified during an inspection as

soon as feasible and document the response. Inspection reports must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, proposed new §352.831(b) would identify specific notifications and notification timelines required by the state. Some events requiring notification may also trigger a requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

*§352.841, Inspection Requirements for Coal Combustion Residuals Landfills*

The commission proposes new §352.841, to adopt by reference the operating criteria included in 40 CFR §257.84 (Inspection requirements for CCR landfills). Qualified persons must inspect all CCR landfills on a frequency outlined based on the objective of the inspection and in accordance with 40 CFR §257.84, and must have initiated inspections by October 19, 2015, for existing landfills, or at the time of initial receipt of CCR wastes in the unit for new and laterally expanding landfills. All landfills require an annual licensed professional engineer's inspection and inspection report in accordance with 40 CFR §257.84, to have been initiated by January 19, 2016, for existing landfills, and no later than 14 months after initial receipt of CCR wastes in the unit for new and laterally expanding landfills. The owner or operator must remedy any release or deficiency identified during an inspection as soon as feasible and document the response. Inspection reports must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, proposed new §352.841(b) would identify specific notifications and notification timelines required by the state in addition to the requirements adopted by reference. Some events requiring notification may also trigger requirement to request an amendment. Notification alone does not satisfy an amendment requirement.

*§352.851, Pre-Opening Inspection*

The commission proposes new §352.851 to require the owner or operator of a new or laterally expanding CCR unit to obtain a licensed professional engineer certification that the unit complies with registration conditions, and to give the executive director an opportunity to inspect the constructed unit before commencing waste management activities. If the owner or operator has not received a notice of intent to inspect the new or expanded unit from the executive director within 15 days of the applicant offering the opportunity for an inspection, then the executive director has waived the opportunity for prior inspection, and the owner or operator may commence CCR management activities in the unit.

*Subchapter H: Groundwater Monitoring and Corrective Action*

*§352.901, Applicability*

The commission proposes new §352.901 to primarily adopt by reference the groundwater monitoring and corrective actions included in 40 CFR §257.90 (Applicability), which gives the general requirements for establishing and implementing a groundwater monitoring program, making a no migration demonstration, and corrective action for releases from a unit. The criteria of proposed Chapter 352, Subchapter H, are applicable to all CCR units, including all CCR landfills, all CCR surface impoundments, and new and lateral expansions of CCR units. All information and data required in proposed Chapter 352, Subchapter H concerning the establishment of a groundwater monitoring system, a sampling and analysis program, and all monitoring data obtained under proposed Chapter 352, Subchapter H, must be included in the annual groundwater monitoring and corrective action report. The initial annual groundwater monitoring and corrective action report was required to be completed and placed in the facility's operating record by January 31, 2018. The owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Proposed new §352.901(b) would establish that with the adoption of new Chapter 352, 30 TAC Chapter 350 (Texas Risk Reduction Program) is not applicable to CCR units as defined in new §352.3 and as further described in new §352.1.

*§352.902, Groundwater Monitoring and Corrective Action Report Submittal*

The commission proposes new §352.902 to establish that the Groundwater Monitoring and Corrective Action Report, which would be prepared in accordance with new §352.901, must be submitted to the executive director for review. The report would be submitted to the executive director for review no later than 30 days after the report was placed in the facility's operating record.

*§352.911, Groundwater Monitoring Systems*

The commission proposes new §352.911 to primarily adopt by reference the groundwater monitoring systems requirements included in 40 CFR §257.91 (Groundwater monitoring systems), which requires owners and operators to install groundwater monitoring systems for all CCR units. The groundwater monitoring system installed must consist of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer accurately representing the background groundwater quality uncontaminated by a CCR unit. Each system must have a minimum of four monitoring wells, one upgradient and three downgradient of the CCR unit. A facility may install a multiunit groundwater monitoring system instead of separate systems, but if a release is detected, then all existing unlined CCR surface impoundments are subject to closure or retrofit. A licensed professional geoscientist or licensed professional engineer must certify the groundwater monitoring system design and construction, and the owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Proposed new §352.911(b) would establish that a groundwater monitoring system for CCR units shall be reviewed and approved by the executive director. The executive director may require additional monitoring wells to be installed to determine compliance with the requirements of new Chapter 352, Subchapter H.

Proposed new §352.911(c) would establish that an owner or operator must request an amendment to the registration and the executive director must approve the request before changes to the groundwater monitoring system required by new §352.911 are implemented.

Additionally, proposed new §352.911(d) would require that monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. Installation, plugging, and abandonment of wells or borings must be carried out in accordance with the requirements in 16 TAC Chapter 76 (Licensing and Regulations of Water Well Drillers and Water Well Pump Installers).

*§352.931, Groundwater Sampling and Analysis Requirements*

The commission proposes new §352.931 to adopt by reference the groundwater sampling and analysis program requirements

included in 40 CFR §257.93 (Groundwater sampling and analysis requirements). The groundwater monitoring program must include sampling and analysis procedures designed to ensure monitoring results will provide an accurate representation of groundwater quality at all background and downgradient wells. The program must include procedures and techniques for sample collection; sample preservation and shipment; analytical procedures; chain of custody control; and quality assurance and quality control. The sampling and analysis methods chosen must be appropriate for groundwater sampling and accurately measure the prescribed constituents, and other monitoring parameters, in groundwater. The owner or operator must establish background groundwater quality in all upgradient wells. The number of samples collected for groundwater monitoring programs must be consistent with the statistical procedures chosen. A licensed professional geoscientist or licensed professional engineer must certify that the chosen statistical method is appropriate for evaluating the groundwater monitoring data. The owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Proposed new §352.931(b) would establish that an owner or operator must request an amendment to the registration before making changes to the groundwater sampling and analysis program required by §352.931.

*§352.941, Detection Monitoring Program*

The commission proposes new §352.941 to primarily adopt by reference the detection monitoring program requirements included in 40 CFR §257.94 (Detection monitoring program), which outlines the requirements for conducting a groundwater detection monitoring program. For all CCR units, a minimum of eight independent samples from each background and downgradient well were required to be collected and analyzed for the constituents listed in Appendix III adopted by reference in proposed §352.1421 and Appendix IV adopted by reference in proposed §352.1431, no later than October 17, 2017, for existing units, and within the first six months after receiving waste in the unit when sampling for new units. The owner or operator must sample all groundwater monitoring wells at least on a semiannual basis, and during each sampling event must sample for all Appendix III constituents adopted by reference in proposed §352.1421, at a minimum, at each well. Upon executive director approval, an alternative sampling frequency may be used if a demonstration is made based on site-specific characteristics and is certified by a licensed professional geoscientist or licensed professional engineer that an alternative sampling frequency is necessary. The alternative sampling frequency can be no less than once a year. If the owner or operator determines there is a statistically significant increase (SSI) over the background values for any constituent in Appendix III adopted by reference in proposed §352.1421, then the owner or operator must either demonstrate that the increase is from a source other than the CCR unit or begin assessment monitoring within 90 days of detecting the SSI. The owner and operator must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

Additionally, proposed new §352.941(b) - (d) would identify state notification requirements and associated timelines if it is determined that there is an SSI detected over background value. These requirements include the additional procedures required to pursue an alternative source demonstration under new Chapter 352.

*§352.951, Assessment Monitoring Program*

The commission proposes new §352.951 to primarily adopt by reference the assessment monitoring requirements included in 40 CFR §257.95 (Assessment monitoring program), except for 40 CFR §257.95(h). The section requires that certain steps and stages of the groundwater monitoring assessment, required under the self-implementing federal rule, would include certain notifications, submittals, and approvals by the executive director. New §352.951 would require the owner or operator to conduct assessment monitoring if an SSI over background levels is detected for one or more of the constituents listed in Appendix III adopted by reference in proposed §352.1421. New §352.951 would also require that within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator sample and analyze the groundwater for all Appendix IV constituents adopted by reference in proposed §352.1431. Further, new §352.951 would require the owner or operator to resample all wells and conduct analyses for all Appendix III parameters adopted by reference in proposed §352.1421, and the Appendix IV constituents adopted by reference in proposed §352.1431 detected during the initial assessment monitoring sampling, within 90 days of obtaining the initial results, and on at least a semiannual basis thereafter. The owner or operator shall establish groundwater protection standards for all detected Appendix IV constituents adopted by reference in proposed §352.1431 within 90 days of obtaining the initial results.

New §352.951(b) would establish that a groundwater protection standard for a constituent shall be the higher of either the maximum contaminant level established under 40 CFR §141.62 (Maximum contaminant levels for inorganic contaminants) and §141.66 (Maximum contaminant levels for radionuclides); the background concentration; or a health-based groundwater protection standard established by new §352.951(b).

The owner or operator shall continue assessment monitoring if the concentrations of any constituent in Appendix III adopted by reference in proposed §352.1421 and Appendix IV adopted by reference in proposed §352.1431 are statistically above background values and below the established groundwater protection standards. If the concentrations of all constituents listed in Appendix III adopted by reference in proposed §352.1421 and Appendix IV adopted by reference in proposed §352.1431 are shown to be statistically at or below background values for two consecutive sampling events, the owner or operator would be allowed to return to detection monitoring upon written approval from the executive director, in accordance with new §352.951(c). If one or more constituents in Appendix IV adopted by reference in proposed §352.1431 are detected at statistically significant levels above the established groundwater protection standard in any sampling event, the owner or operator must prepare a notification identifying the Appendix IV constituents adopted by reference in proposed §352.1431 that have exceeded the groundwater protection standard and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. The owner or operator of the CCR unit must also characterize the nature and extent of the release, both vertically and horizontally, and any relevant site conditions that may affect the remedy ultimately selected. The owner or operator must also notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination, if constituents have migrated off-site.

Within 90 days of finding that any of the constituents in Appendix IV adopted by reference in proposed §352.1431 have exceeded

the established groundwater protection standards, the owner or operator must either initiate an assessment of corrective measures or demonstrate that the contamination was from a source other than the CCR unit. If an assessment of corrective measures is required and the CCR unit is an existing unlined CCR surface impoundment, then the unit is subject to the closure or retrofit requirements found in §352.1211.

Additionally, proposed §352.951(d) - (f) would identify state notification requirements and associated timelines, demonstrations, and information that the owner or operator must submit to the executive director if it is determined that there is an SSI exceeding any groundwater protection standards at any monitoring well, including the procedures for pursuing an alternative source demonstration.

*§352.961, Assessment of Corrective Measures*

The commission proposes new §352.961 to primarily adopt by reference the groundwater monitoring and corrective action requirements included in 40 CFR §257.96, which outlines the requirements for conducting the assessment of corrective measures. Within 90 days of finding that any constituent listed in Appendix IV adopted by reference in proposed §352.1431 has been detected at a statistically significant level exceeding the established groundwater protection standard, or immediately upon detection of a release from a CCR unit, the owner or operator must initiate an assessment of corrective measures to prevent further releases, remediate any releases, and restore affected areas to original conditions. The assessment of corrective measures must be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator of the CCR unit must continue to monitor groundwater in accordance with the assessment monitoring program while the assessment of corrective measures is conducted. The assessment of corrective measures must include an analysis of the effectiveness of potential corrective measures in meeting all the requirements and objectives of the remedy. The completed assessment of corrective measures must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

In accordance with proposed §352.961(b), the owner or operator would submit to the executive director an application for amendment to the registration within 30 days of completing the assessment of corrective measures, and would include the completed assessment of corrected measures; the proposed selection of remedy; information that characterizes of the extent of the release both horizontally and vertically; a comparison of the constituents from Appendix III adopted by reference in proposed §352.1421 with an SSI to the corresponding background values; a comparison of the detected constituents from Appendix IV adopted by reference in proposed §352.1431 and the corresponding groundwater protection standards of new §352.951(b); a schedule for submitting the Corrective Action Effectiveness Reports required by new §352.991; and a signed affidavit certifying that all persons who own land or reside on land that directly overlays the plume of contamination have been notified as required by new §352.951.

Proposed new §352.961(c) would prescribe how an applicant for a major amendment to a registration to add corrective action and select a final remedy would fulfill public notice requirements in 40 CFR §257.96(e) that would be adopted by reference in proposed new §352.961(a). The federal rule requires an owner or operator to discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy for corrective action, in a public meeting with interested and affected parties. Proposed §352.961(c) would implement this federal requirement by requiring an owner or operator submitting an application for a major amendment to add corrective action requirements to a registration to provide notice and hold a public meeting with the executive director, in accordance with proposed new Chapter 352, Subchapter D. An application to amend a registration to add corrective action would include the assessment of corrective measures in the application. The entire application, including the assessment, would be open for public comment during the entire public comment period and the mandatory public meeting. In the interest of administrative efficiency, the commission expects that the notice of public meeting will likely be combined with the notice of receipt of application and the executive director's initial decision. As a result, the executive director's initial decision on the final remedy would be available for public comment during the public meeting in addition to the application, including the corrective measures assessment. Owners and operators that held a public meeting satisfying the requirement of 40 CFR §257.96(e) prior to application submission are not required by proposed §352.961(c) to hold another public meeting; however, other mandatory public meeting criteria in proposed §352.451 may require a public meeting after application submission.

*§352.971, Selection of Remedy*

The commission proposes new §352.971 to adopt by reference the groundwater monitoring and corrective action requirements in 40 CFR §257.97, which outlines the requirements for selecting a remedy for a release. Based on the results of the assessment of corrective measures, the owner or operator must, as soon as feasible, select a remedy that, at a minimum: is protective of human health and the environment; will attain the established groundwater protection standards; control the source of the release; remove as much of the contaminated materials as possible; and comply with the waste management standards in new §352.981. When selecting the remedy to be used, the owner or operator shall consider the following: the long- and short-term effectiveness of the remedy; the effectiveness of the remedy in controlling the source of contamination; the ease or difficulty of implementing the remedy; and how the remedy addresses the impacted parties' concerns. The owner or operator must specify, as part of the selected remedy, a schedule for implementing and completing remedial activities. The schedule must take the following into consideration: extent and nature of the contamination; reasonableness of meeting the established groundwater protection standards; availability of treatment or disposal for CCR managed during the remedy; potential risks to human health and the environment; the resource value of the aquifer; and other relevant factors. Demonstration of these requirements being met must be signed and sealed by a licensed professional geoscientist or licensed professional engineer, and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. The selection of remedy will be considered complete when the registration amendment, including the approved corrective action program, is issued.

*§352.981, Implementation of the Corrective Action Program*

The commission proposes new §352.981 to primarily adopt by reference the groundwater monitoring and corrective action requirements in 40 CFR §257.98, which outlines the requirements for implementing the approved corrective action program, including the final remedy. Within 90 days of selecting a remedy, the owner or operator must initiate remedial activities based on the

schedule established during the selection of remedy process. The corrective action groundwater monitoring program must, at a minimum: meet the requirements for an assessment monitoring program; document the effectiveness of the corrective actions; and demonstrate compliance with the established groundwater protection standards. The owner or operator must also take any interim measures necessary to reduce further contamination from the unit. If at any time the owner or operator determines that the remedy is not achieving compliance, then they must implement other methods or techniques that could possibly achieve compliance. Corrective action shall be considered complete when the owner or operator can demonstrate for three consecutive years, compliance with the established groundwater protection standards at all points within the plume of contamination for the constituents listed in Appendix IV adopted by reference in proposed §352.1431, and all remedial activities have been completed. Demonstration of these requirements must be signed and sealed by a licensed professional geoscientist or licensed professional engineer, and meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. The owner or operator may return to detection monitoring or assessment monitoring upon written approval from the executive director.

*§352.991, Corrective Action Effectiveness Report*

The commission proposes new §352.991 to describe the reporting requirements for owners and operators conducting corrective action. Owners and operators must provide to the executive director a periodic evaluation of the ongoing corrective action program to identify how effective the corrective measures have been, how much of the remediation is complete, and an estimate of remaining time required to achieve corrective action goals.

*Subchapter I: Financial Assurance*

*§352.1101, Financial Assurance Required*

The commission proposes new §352.1101 to require financial assurance from owners and operators required to perform post-closure care under new Chapter 352. The amount of the financial assurance will be for the post-closure care maintenance requirements that would be adopted by reference in proposed §352.1241. The amount will be based on the cost to hire a third-party to perform the post-closure care maintenance requirements for the duration of the post-closure care period. A financial assurance mechanism acceptable to the executive director must be submitted no more than 90 days after the executive director approves a registration.

If an owner or operator must maintain financial assurance beyond the minimum 30 years in accordance with new §352.1241, then the owner or operator must submit a new cost estimate within 180 days before the end of the preceding post-closure care period.

If an owner or operator fails to perform post-closure care, then the executive director may direct the use of the funds provided under this section to perform the required care.

Financial assurance under this chapter must be demonstrated in accordance with 30 TAC Chapter 37, Subchapters A - D (General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), except as indicated in new §352.1111 (Exceptions).

*§352.1111, Exceptions*

The commission proposes new §352.1111 to clarify exceptions to 30 TAC Chapter 37 (Financial Assurance). The exceptions in new §352.1111 include identifying any mechanisms that may not be used for financial assurance under new Chapter 352; identifying sections in Chapter 37 that do not apply to new Chapter 352; prescribing which endorsement must be used for insurance mechanisms; clarifying the timing for mechanism increases for financial tests, corporate guarantees, and local government financial tests; and requiring registration numbers be noted on mechanisms.

*Subchapter J: Closure and Post-Closure Care*

*§352.1200, General*

The commission proposes new §352.1200 to clarify that all references in new Chapter 352, Subchapter J to 40 CFR §257.95(h), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.951(b).

*§352.1201, Inactive Coal Combustion Residuals Surface Impoundments*

The commission proposes new §352.1201 to adopt by reference the closure requirements in 40 CFR §257.100 (Inactive CCR surface impoundments), which requires all inactive surface impoundments to meet all of the requirements for existing surface impoundments. Owners and operators of inactive surface impoundments must demonstrate compliance with regulations applicable to existing surface impoundments by the timeframes prescribed in this section or will be subject to closure requirements in §352.1211 (Closure or Retrofit of Coal Combustion Residuals Units).

*§352.1211, Closure or Retrofit of Coal Combustion Residuals Units*

The commission proposes new §352.1211 to adopt by reference the closure and retrofit requirements in 40 CFR §257.101 (Closure or retrofit of CCR units), which identifies CCR units required to close, and the timeframe for initiating closure procedures. Owners and operators of existing unlined surface impoundments must stop applying CCR and non-CCR wastes to the unit and initiate closure or retrofitting of the unit no later than October 31, 2020, in accordance with Chapter 352, Subchapter J. Existing CCR surface impoundments not meeting the location standards identified in new Chapter 352 will be required to close in accordance with new §352.1211. New or existing surface impoundments failing to make the safety factor assessments within the established timeframes, or do not meet the minimum safety factors required by new Chapter 352 will also be required to close in accordance with new §352.1211; and existing landfills that are not compliant with the location restriction for unstable areas will be required to close in accordance with new §352.1211.

*§352.1221, Criteria for Conducting the Closure or Retrofit of Coal Combustion Residuals Units*

The commission proposes new §352.1221 to adopt by reference the closure requirements in 40 CFR §257.102 (Criteria for conducting the closure or retrofit of CCR units). Owners and operators of CCR units must close the unit by either removing the CCR wastes and decontaminating until groundwater monitoring concentrations for Appendix IV adopted by reference in proposed §352.1431 constituents do not exceed the groundwater protection standards, or by leaving wastes in place and installing a final cover. A written plan of how closure will be conducted on all CCR

units, including planned closure steps and schedules, must have been generated by October 17, 2016, for existing units, and no later than initial receipt of wastes for new or laterally expanding units. Surface impoundments that close leaving wastes in place must be drained and stabilized before installation of the final cover. Owners and operators are required to initiate closure no later than 30 days after the known last receipt of waste or removal of wastes for beneficial use. Idle units that have not received waste, or have not had waste removed for beneficial use, must initiate closure no later than two years after the last date of either activity. The owner or operator may make a demonstration meeting the requirements of new §352.1221 that the waste activities will resume, including providing a certification from an authorized representative. CCR landfills are expected to complete closure within six months, unless a demonstration can be made that additional time is needed. No more than two, one-year extensions will be added to the time required for landfill closure. CCR surface impoundments are expected to complete closure within five years, unless a demonstration can be made that additional time is needed. A surface impoundment of 40 acres or less will only be granted one, two-year extension to complete closure. A surface impoundment greater than 40 acres, may be granted up to five, two-year extensions to complete closure. Units closed with wastes left in place are subject to deed recordation requirements. Owners and operators must comply with the recordkeeping, notification, and internet posting requirements of new Chapter 352.

New §352.1221 also contains the guidelines for retrofitting an existing CCR surface impoundment, which requires removing all wastes and installing or upgrading the liner to meet the liner requirements in new §352.721. A written plan of retrofitting activities must be created at least 60 days before initiating retrofitting. Retrofitting activities must follow the timelines for closure of a surface impoundment prescribed in new §352.1221.

New §352.1221 requires a licensed professional engineer certification of documentation and demonstrations made to comply with new §352.1221 and these records must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

The commission also proposes new §352.1221(b) to require that prior to a certification of closure being issued by the executive director for closing a CCR unit, an approved financial assurance mechanism, other than insurance, that meets the requirements of new Chapter 352, Subchapter I must be in place.

*§352.1231, Alternative Closure Requirements*

The commission proposes new §352.1231 to adopt by reference the alternative closure requirements in 40 CFR §257.103 (Alternative closure requirements), which describes flexibilities that may be afforded to owners and operators of units that would otherwise be forced to initiate closure under the requirements of new Chapter 352. If there is no alternative disposal capacity available, the owner or operator must initiate closure when an alternative disposal capacity becomes available, or five years after the alternative closure demonstration was made. Owners or operators may pursue these flexibilities if no additional capacity is available and the coal-fired boiler is designated for closure. Closure of the unit is required by: April 19, 2021 for landfills; October 17, 2023, for surface impoundments of 40 acres or less; and October 17, 2028, for surface impoundments greater than 40 acres. Progress reports are required by new §352.1231. Notifications complying with the requirements of new §352.1231 require a licensed professional engineer certification and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352.

*§352.1241, Post-Closure Care Requirements*

The commission proposes new §352.1241 to adopt by reference the post-closure requirements from 40 CFR §257.104 (Post-closure care requirements), which requires post-closure maintenance and monitoring for 30 years after CCR units are closed with wastes in place. A unit ending the post-closure care period in assessment monitoring will be required to extend the post-closure period until the owner or operator meets the requirements to return to detection monitoring. A written post-closure care plan was required by October 17, 2016, for existing units, and no later than initial receipt of wastes for new or laterally expanding units. Documentation of information required by new §352.1241 requires licensed professional engineer certification and must meet the recordkeeping, notification, and internet posting requirements of new Chapter 352. New §352.1241(c) proposes to extend the post-closure care period beyond 30 years until the owner or operator makes a demonstration of no further risk to human health, the environment, or property, and the executive director approves the demonstration.

*Subchapter K: Recordkeeping, Notification, and Posting of Information to the Internet*

*§352.1301, Recordkeeping Requirements*

The commission proposes new §352.1301 to adopt by reference the recordkeeping requirements from 40 CFR §257.105 (Recordkeeping requirements). Owners and operators subject to new Chapter 352 must maintain a written record of all materials generated in response to the requirements of new Chapter 352. The retention time is five years for most records, however design and construction records must be kept until closure. Corrective action effectiveness reports must be kept until the completion of the remedy. Facilities need only retain the most recent revision in the record for many of the reoccurring plans and reports.

Proposed new §352.1301(b) would also include a requirement that groundwater monitoring and associated elevation records must be kept for the active life and the post-closure care period of a CCR unit.

*§352.1311, Notification Requirements*

The commission proposes new §352.1311 to adopt by reference the notification requirements from 40 CFR §257.106 (Notification requirements), which requires an owner or operator of a CCR unit to send a notification to the executive director of the availability of information generated in response to requirements in new Chapter 352. In most cases, notification is required within 30 days of including the information in the facility's operating record, however, an owner or operator constructing a new unit must provide a notice within 60 days of the construction and certify the construction no later than receipt of the first CCR wastes in the new or expanded unit.

*§352.1321, Publicly Accessible Internet Site Requirements*

The commission proposes new §352.1321 to adopt by reference the internet posting requirements from 40 CFR §257.107 (Publicly accessible internet site requirements). An owner or operator of a CCR unit must post information required by new Chapter 352 on a publicly accessible website and maintain the availability of the information for at least five years. In most cases, the information is required to be posted within 30 days of including the

information in the facility's operating record, however an owner or operator constructing a new unit must post the information to the publicly accessible website within 60 days of the construction, and certify the construction no later than receipt of the first CCR wastes in the new or expanded unit.

Additionally, new §352.1321 would identify the items the owner or operator shall post to a publicly accessible website to comply with public participation requirements. These items shall be posted for the active life of the CCR unit and through the completion of the post-closure care requirements of new §352.1241.

*Subchapter L: Appendices*

*§352.1401, Appendix I - Maximum Contaminant Levels Promulgated Under the Federal Safe Drinking Water Act*

The commission proposes new §352.1401 to adopt by reference Appendix I--Maximum Contaminant Levels (MCLs) from 40 CFR Part 257, Subpart D, which lists the maximum contaminant levels of various constituents of concern, as promulgated under the federal Safe Drinking Water Act. Owners and operators of CCR units must compare groundwater data to these values for determination of exceedances and releases.

*§352.1421, Appendix III - Constituents for Detection Monitoring*

The commission proposes new §352.1421 to adopt by reference Appendix III--Constituents for Detection Monitoring from 40 CFR Part 257, Subpart D, which lists the constituents owners and operators of CCR units must evaluate during the groundwater detection monitoring protocol.

*§352.1431, Appendix IV - Constituents for Assessment Monitoring*

The commission proposes new §352.1431 to adopt by reference Appendix IV-- Constituents for Assessment Monitoring from 40 CFR Part 257, Subpart D, which lists the constituents owners and operators of CCR units must evaluate during the groundwater assessment monitoring protocol.

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, fiscal implications are anticipated for the agency as a result of the administration or enforcement of the proposed rules. Fiscal implications are also expected for units of local government that own or operate coal fired power plants or manage CCR; though in general, these fiscal implications are not expected to be significant.

The proposed rulemaking creates a new Chapter 352, which contains the state's plan to operate a CCR registration program in lieu of the federal requirements. The proposed rules will implement a state registration and compliance monitoring program to authorize CCR units, complaint and compliance inspections, enforcement proceedings, and the review of compliance monitoring data.

In 2017, the General Appropriations Act (Senate Bill 1, 85th Texas Legislature) indicated that $390,000 each year of the commission's appropriation, under Strategy A.2.3. Waste Management and Permitting, shall be used to implement a CCR program and authorized an additional four FTE employee positions for this purpose. In 2019, the enactment of House Bill 1, General Appropriations Act (86th Texas Legislature), continued the funding and authorization of employees. The method of finance for this funding is the state's General-Revenue Dedicated Waste Management Account Number 549.

Proposed §352.231(h) contains a registration fee of $150 per application or amendment application. It is estimated that in the first year, 17 applications would be filed for an increase of $2,550 to the Waste Management Account, and an estimated annual increase of $1,200 in subsequent years due to amendment fees. The additional revenue raised by the implementation of these proposed rules combined with the current level of appropriations for the program are expected to have a negative impact on the fund balance of the Waste Management Account.

Two units of local government will be affected by this proposed rule change, Texas Lower Colorado River Authority and City Public Service (CPS Energy of San Antonio), because they operate power plants with CCR units. Each will be required to complete the application, pay the $150 registration fee, and any subsequent amendment fee of $150. Under the federal regulations, an application fee is not required, so this is an increased cost to the regulated community. If the applicant uses outside counsel or experts to prepare their initial application, those expenses could total $29,750, using an average rate of $175 per hour at 170 hours. It is estimated that amendment applications require approximately 29 hours of preparation time, and if they required expert assistance to complete the amendment application, it could total $5,075.

In addition, the proposal will require owners and operators to provide financial assurance if post-closure care is required under new Chapter 352. The exact cost depends on a number of factors and would include contracting with a third-party to perform the post-closure care maintenance requirements for the duration of the post-closure care period.

Public Benefits and Costs

Ms. Bearse also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the proposed rules will be the creation of a state plan to regulate disposal of CCR, including enforcement capability, a complaint process and compliance inspections. The proposed rules are expected to enhance the commission's effort to protect public health and the environment by preventing or minimizing the level of contaminants and waste released to the environment through regulation and authorization of facilities. Without these proposed rules, the only enforcement tool available to the public is a citizen lawsuit.

In addition to the two entities of local government, there are approximately 15 businesses which will be subject to the proposed rules and will be required to pay the $150 application fee and amendment application fee. Under the federal regulations, an application fee is not required, so this is an increased cost to the regulated community. If the applicant uses outside counsel or experts to prepare their initial application, those expenses could total $29,750, using an average rate of $175 per hour at 170 hours. It is estimated that amendment applications require approximately 29 hours of preparation time, and if a business required expert assistance to complete the amendment application, it could total $5,075.

In addition, the proposal will require owners and operators to provide financial assurance if post-closure care is required under new Chapter 352. The exact cost depends on a number of factors and would include contracting with a third-party to perform the post-closure care maintenance requirements for the duration of the post-closure care period.

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 registrations and amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. Currently, the owners and operators that are storing CCR and would be subject to the proposed rules are not small businesses.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed 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 creates a registration program and requires owners and operators to prepare and submit registration applications, amendment applications, if needed, and to submit annual compliance monitoring reports to the commission for approval. The program created by these proposed regulations will require a continuation of funding in future appropriations to operate the program. It is estimated that these proposed rules will increase fees paid to the agency, an estimated $2,550 in the first year and $1,200 in subsequent years. The proposed rulemaking does increase the number of individuals subject to its applicability; however, those individuals were previously regulated by federal regulations. During the first five years the proposed rules are in effect, the rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed new rules 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." A "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3), as a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed new rules provide comprehensive standards and create a program to regulate owners and operators of landfills and surface impoundments used for the disposal and management of CCR generated from the combustion of coal by electric utilities and independent power producers.

The proposed new rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because the proposed new rules do not alter in a material way the existing, self-implementing requirements already in effect under 40 CFR Part 257, Subpart D, for owners and operators of landfills and surface impoundments managing CCR.

In addition to not meeting the definition of a "Major environmental rule," the proposed new rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency. The proposed new rules do not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor are the new rules proposed solely under the general powers of the agency.

The proposed new rules do not exceed a standard set by federal law because the proposed new rules substantially incorporate federal requirements for new and existing landfills and surface impoundments managing CCR generated from the combustion of coal at electric power utilities and independent power producers. Further, programmatic elements of the proposed new rules are consistent with federal requirements for state programs of prior approval. Therefore, the proposed rules are compatible with federal law.

Additionally, the proposed rules do not exceed an express requirement of state law because Texas Health and Safety Code (THSC), Chapter 361, Solid Waste Disposal Act, establishes requirements for the commission to regulate industrial solid waste. Therefore, the proposed rules are compatible with state law.

The proposed new rules do not exceed a requirement of a delegation agreement because the proposed new rules are not subject to a delegation agreement.

Finally, the proposed new rules are not proposed solely under the general powers of the agency. The proposed new rules are proposed under the THSC, Solid Waste Disposal Act, §361.017 and §361.024, which require the commission to control all aspects of the management of industrial solid waste by all practical and economically feasible methods consistent with its powers and duties.

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

Takings Impact Assessment

The commission evaluated these proposed new rules and performed an assessment of whether the proposed new rules constitute a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of these proposed new rules would not constitute a taking of real property.

The purpose of the proposed new rules is to provide comprehensive standards and create a program regulating owners and operators of landfills and surface impoundments used for the disposal and management of CCR generated from the combustion of coal by electric utilities and independent power producers. The proposed new rules do not substantially change the existing, self-implementing federal requirements in effect under 40 CFR Part 257, Subpart D, for owners and operators of landfills and surface impoundments managing CCR.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Promulgation and enforcement of these proposed new rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the proposed new rules because the proposed new rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the proposed new rules. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the CMP in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs. CMP policies applicable to the proposed rules include that new CCR facilities and lateral expansion of existing facilities shall be sited, designed, and constructed to prevent releases of pollutants; and new and existing CCR facilities will be operated in a way to prevent releases of pollutants.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules would ensure proper management of CCR in all regionals of the state, including coastal area.

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 January 9, 2020, 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 before 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 2017-037-352-WS. The comment period closes on January 21, 2020. 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 Ms. Charly Fritz, Waste Permits Division, at (512) 239-2331.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §§352.1 - 352.6

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.1. Applicability.*

(a) This chapter applies to:

(1) owners and operators of new and existing coal combustion residuals (CCR) landfills and surface impoundments that dispose of or manage CCR generated from the combustion of coal at electric utilities and independent power producers;

(2) owners and operators of CCR disposal units located off-site of electric utility or independent power producer facilities;

(3) owners and operators of inactive CCR surface impoundments located at active electric utilities and independent power producers regardless of the fuel currently used to produce electricity at the facility;

(4) a lateral expansion of a CCR landfill or surface impoundment; and

(5) any CCR management practice that does not meet the definition of beneficial use of CCR in 40 Code of Federal Regulations (CFR) §257.53 (Definitions) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435).

(b) This chapter does not apply to:

(1) owners and operators of CCR landfills that ceased receiving CCR before October 19, 2015;

(2) owners and operators of electric utilities and independent power producers that ceased producing electricity before October 19, 2015;

(3) wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals;

(4) fly ash, bottom ash, boiler slag, or flue gas desulfurization materials generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

(5) beneficial use of CCR as defined in 40 CFR §257.53 as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435);

(6) CCR placement at active or abandoned underground or surface coal mines;

(7) owners and operators of municipal solid waste landfills that receive CCR; or

(8) owners and operators of commercial industrial nonhazardous waste landfill facilities authorized by a permit issued under Chapter 335, Subchapter T of this title (relating to Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities), that receive CCR.

*§352.2. Applicability of Other Regulations.*

The commission adopts by reference 40 Code of Federal Regulations §257.52 (Applicability of other regulations) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.3. Definitions.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.53 (Definitions) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435), subject to the exceptions, modifications, and additions under this section.

(b) The terms used in this chapter that are not defined under this section are not given the definitions found in the United States Resource Conservation and Recovery Act.

(c) The words and terms used in this chapter also have the meanings in Chapter 3 of this title (relating to Definitions) and the following additional meanings.

(1) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste as defined in §335.1 of this title (relating to Definitions) into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. For purposes of this chapter, disposal does not include the storage or the beneficial use of coal combustion residuals.

(2) Impacted property--The entire area (i.e., on-site and off-site) containing a statistically significant increase over the groundwater protection standards as determined in this chapter for any constituents in Appendix IV in §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring).

(3) Leachate--Any liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such wastes.

(4) Licensed professional geoscientist--A geoscientist who holds a valid license issued by the Texas Board of Professional Geoscientists under the Texas Geoscience Practice Act.

(5) Off-site--Property which cannot be characterized as on-site.

(6) On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

(7) Publicly accessible website--A website at which all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as a registration or submittal of personal information, including an e-mail address, or requirement to submit a document request. All required information must be clearly identifiable and must be able to be printed and downloaded by anyone accessing the site.

(8) Registration--Written authorization of specific solid waste management activities relating to certain coal combustion residuals, as authorized by this chapter.

*§352.4. Engineering and Geoscientific Information.*

All engineering and geoscientific information submitted to the commission under this chapter shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act, and the licensing and registration boards under these acts.

*§352.5. Laboratory Accreditation and Certification.*

Environmental testing laboratories generating analytical data required under this chapter must be accredited in accordance with the Texas Commission on Environmental Quality Environmental Testing Laboratory Accreditation and Certification Program requirements of Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification).

*§352.6. General Prohibitions.*

In addition to the requirements of §352.101 of this title (relating to Registration Required), no person may cause, suffer, or allow the collection, handling, storage, processing, management, or disposal of coal combustion residuals (CCR) in such a manner so as to cause:

(1) the discharge, or imminent threat of discharge, of CCR into, or adjacent to, the waters in the state, without obtaining specific authorization for such a discharge from the Texas Commission on Environmental Quality;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health or welfare.

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

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## SUBCHAPTER B. REGISTRATION CONDITIONS

**30 TAC §§352.101, 352.111, 352.121, 352.131, 352.141**

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.101. Registration Required.*

(a) Except as provided by §352.1 of this title (relating to Applicability), a person who manages or disposes of coal combustion residuals (CCR) generated from the combustion of coal at electric utilities and independent power producers in an existing landfill; or an existing, or inactive surface impoundment; shall within 365 days of the effective date of this chapter file a registration application in accordance with this chapter.

(b) Except as provided by §352.1 of this title, no person may cause, suffer, or allow the disposal or management of CCR in a new or lateral expansion of a CCR landfill or surface impoundment, unless such activity is authorized by a registration under this chapter.

(c) The executive director may issue a registration as provided in this chapter. One or more CCR units located at the same facility, and on contiguous property must be authorized under one registration. CCR units located on non-contiguous property may not be authorized under the same registration.

*§352.111. Registration Characteristics and Conditions.*

The executive director shall incorporate the applicable characteristics and conditions of Chapter 305, Subchapter F of this title (relating to Permit Characteristics and Conditions) into a registration issued under this chapter.

*§352.121. Duration.*

A registration may be issued for the active life of the unit as well as any post-closure care period, as needed, but may be revoked or amended at any time that the owner or operator fails to meet the minimum standards set forth in this chapter, or for any other good cause.

*§352.131. Amendments.*

(a) A change in a term, condition, or provision of a registration requires an amendment.

(b) An application requesting an amendment of a registration issued under this chapter will be processed as a major amendment or a minor amendment in accordance with §305.62 of this title (relating to Amendments), subject to the following exceptions:

(1) §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) does not apply to a registration issued under this chapter;

(2) an amendment application will be processed under this chapter and will not be processed under Chapter 281 of this title (relating to Applications Processing); and

(3) a change initiated by the executive director under §305.62(d) of this title shall be processed as an amendment, and not as a modification.

*§352.141. Issuance and Transfer.*

(a) The executive director may issue a registration to a specific person, and a registration may not be transferred from one person to another without complying with §305.64 of this title (relating to Transfer of Permits).

(b) A registration is attached to the real property to which it pertains and may not be transferred from one facility to another.

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. REGISTRATION APPLICATION CONTENTS

**30 TAC §§352.201, 352.211, 352.221, 352.231, 352.241, 352.251, 352.261, 352.271, 352.281, 352.291, 352.301, 352.311**

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform

any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.201. Application Required.*

Any person who is required to obtain a registration, or who requests an amendment of a registration, shall complete, sign, and submit an application on forms provided by, and in the manner required by, the executive director.

*§352.211. Who Applies.*

For coal combustion residuals registrations, it is the duty of the owner to submit an application for a registration, unless a facility is owned by one person and operated by another, in which case it is the duty of the facility operator to submit an application for a registration.

*§352.221. Signatories to Applications.*

The owner or operator shall sign an application in accordance with §305.44 of this title (relating to Signatories to Applications).

*§352.231. General Application Requirements.*

(a) The owner or operator applying for a registration, or registration amendment, shall submit an application containing the information required by application forms prescribed by the executive director and the information required by this subchapter.

(b) The owner or operator shall provide any additional information requested by the executive director.

(c) All technical reports in an application must be prepared and signed in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information).

(d) All certifications executed by a licensed professional engineer or licensed professional geoscientist in an application must be accompanied by all technical reports relied upon by the professional for the certification.

(e) General maps shall be provided with the application in accordance with §305.45(a)(6) of this title (relating to Contents of Application for Permit) and §330.59(c) of this title (relating to Contents of Part I of the Application). In addition, topographic, aerial, and facility layout maps shall be provided that visually describe surrounding features, the facility layout, and identify unit-related details. If an application is submitted in accordance with §352.961(b) of this title (relating to Assessment of Corrective Measures), the land ownership map with accompanying landowners list must contain impacted property owner information, if applicable, in the format prescribed by this subsection.

(f) The owner or operator shall verify that the design, construction, and operation of the coal combustion residuals landfill or surface impoundment meets the requirements of §352.2 of this title (relating to Applicability of Other Regulations).

(g) Property owner information shall be provided in the application in accordance with §330.59(d) of this title, except §330.59(d)(2)(B) of this title.

(h) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a registration or amendment is $150 total, including $100 toward the application fee, and an additional $50 to provide for the cost of providing the required notice.

*§352.241. Geology.*

(a) A summary of the geologic conditions at the facility, including the relation of the geologic condition to each coal combustion residuals unit, must be prepared and signed in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information) and included in the application. The summary must include sufficient information and data; all groundwater monitoring data required by 40 Code of Federal Regulations Part 257, Subpart D, as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301); and information required by §§352.601, 352.621, 352.631, and 352.641 of this title (relating to Placement Above the Uppermost Aquifer; Fault Areas; Seismic Impact Zones; and Unstable Areas).

(b) Previously prepared documents may be submitted, but must be supplemented or updated as necessary to provide the requested information.

(c) Sources and references for information must be provided.

*§352.251. Location Restriction Application Submission.*

In the application, the owner or operator shall submit documentation demonstrating compliance with applicable location restrictions in Subchapter E of this chapter (relating to Location Restrictions).

*§352.261. Design Criteria Application Submission.*

(a) In the application, the owner or operator shall submit documentation demonstrating compliance with applicable design criteria in Subchapter F of this chapter (relating to Design Criteria).

(b) For new or laterally expanding coal combustion residuals landfills and surface impoundments, the owner or operator shall submit subsurface soil information. A sufficient number of borings shall be performed to establish the subsurface stratigraphy and determine geotechnical properties beneath the unit. The borings must be to a sufficient depth to identify the uppermost aquifer and any underlying hydraulically interconnected aquifers. All borings shall be conducted in accordance with established field exploration methods. The subsurface soil information must be prepared and certified in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information) and shall be included with the application. The subsurface soil information must include:

(1) a description of all borings drilled at the unit location, to test soils and characterize groundwater;

(2) a unit map drawn to scale showing the surveyed locations and elevations of the borings;

(3) cross-sections prepared from the borings depicting the generalized strata at the unit;

(4) boring logs including a description of materials encountered, including any discontinuities such as fractures, fissures, slickensides, lenses, or seams;

(5) a description of the geotechnical data and the geotechnical properties of the subsurface soil materials, including the suitability of the soils and strata for the intended uses; and

(6) a demonstration that all geotechnical tests were performed in accordance with industry practice and recognized procedures.

*§352.271. Operating Criteria Application Submission.*

In the application, the owner or operator shall submit documentation demonstrating compliance with Subchapter G of this chapter (relating to Operating Criteria), including submittal of the most recent annual inspection report.

*§352.281. Groundwater Monitoring and Corrective Action Application Submission.*

(a) In the application, the owner or operator shall submit the following:

(1) a copy of the initial and most recent annual groundwater monitoring and corrective action reports required by §352.901 of this title (relating to Applicability);

(2) a description and details of the groundwater monitoring system that demonstrate compliance with the requirements of §352.911 of this title (relating to Groundwater Monitoring Systems); and

(3) a description and details of the groundwater sampling and analysis program that demonstrate compliance with the requirements of §352.931 of this title (relating to Groundwater Sampling and Analysis Requirements).

(b) Detection monitoring. The owner or operator shall submit sufficient information, supporting data, analyses, and where applicable the most recent alternative source demonstration, to support a detection monitoring program meeting the requirements of §352.941 of this title (relating to Detection Monitoring Program).

(c) Assessment monitoring. If any Appendix III constituents adopted by reference in §352.1421 of this title (relating to Appendix III - Constituents for Detection Monitoring) have been detected in the groundwater at statistically significant increases over background values at or before the time of registration application submission, the owner or operator shall submit sufficient information, supporting data, analyses, and where applicable the most recent alternative source demonstration, to support an assessment monitoring program that meets the requirements of §352.951 of this title (relating to Assessment Monitoring Program).

(d) Corrective action. If any Appendix IV constituents adopted by reference in §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring) have been detected in the groundwater at statistically significant levels above the groundwater protection standards established in §352.951 of this title, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §§352.951, 352.961, and 352.971 of this title (relating to Assessment Monitoring Program; Assessment of Corrective Measures; and Selection of Remedy).

*§352.291. Demonstration of No Migration Submission.*

An owner or operator seeking suspension of groundwater monitoring requirements by demonstration of no potential for any Appendix III and Appendix IV constituent adopted by reference in §352.1421 and §352.1431 of this title (relating to Appendix III - Constituents for Detection Monitoring; and Appendix IV - Constituents for Assessment Monitoring) to migrate into the uppermost aquifer from a coal combustion residuals unit during the active life and post-closure care of that unit, may, in the application, provide a demonstration documenting the assessment in accordance with §352.901 of this title (relating to Applicability). The executive director shall review the demonstration for denial or concurrence.

*§352.301. Closure and Post-Closure Care Application Submission.*

(a) In the application, the owner or operator shall submit documentation demonstrating compliance with Subchapter J of this chapter (relating to Closure and Post-Closure Care).

(b) The owner or operator must also submit the post-closure care cost estimate required by §352.1101(b) of this title (relating to Financial Assurance Required).

*§352.311. Retention of Application Data.*

The owner or operator shall keep records throughout the term of the registration. These records include applications, notifications, and reports required by this chapter and data and supplemental information used to complete applications and reports required by 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.

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## SUBCHAPTER D. REGISTRATION APPLICATION PROCEDURES

### 30 TAC §§352.401, 352.411, 352.421, 352.431, 352.441, 352.451, 352.461, 352.471, 352.481

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.401. Application Deficiencies.*

The executive director will notify an applicant of any additional information or application materials required to complete the application by transmitting a notice of deficiency (NOD) to the applicant. The NOD will specify a deadline for the NOD response up to 60 days from the executive director's transmittal of the NOD.

*§352.411. Extensions.*

The applicant may submit a written request for additional time to respond to a notice of deficiency that sets forth the reasons why the applicant cannot respond within the time provided and specifies the amount of additional time requested.

*§352.421. Applications Returned.*

If the executive director does not receive an adequate and timely response to a notice of deficiency by the response deadline, the executive director may return the incomplete application to the applicant.

*§352.431. Public Notice of Application.*

(a) Applicability. This section applies to an application for a new coal combustion residuals (CCR) registration, and an application for a major amendment of a CCR registration.

(b) Public Notice. Notice of receipt of application, the executive director's initial decision, and an opportunity to provide public comment and request a public meeting shall be made in accordance with the procedures contained in §39.503(c) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit), without regard to the date of administrative completeness.

(c) Text of public notice. The text of the notice under this section shall include the internet address required by §352.1321 of this title (relating to Publicly Accessible Internet Site Requirements).

(d) Comment period. The public comment period for an application under this section shall be a minimum of 30 days after the publication of the notice in the newspaper.

(e) Public comments. The executive director shall consider all public comments received before the close of the public comment period.

*§352.441. Revised Notice of Changes to Application.*

Revised notice is required if changes to an application that would constitute a major amendment under §352.131 of this title (relating to Amendments) are made after notice of receipt of application has been mailed and published.

*§352.451. Public Meeting.*

(a) The owner or operator under this chapter and the commission may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is located.

(b) The commission shall hold a public meeting if a public meeting is required based on the criteria of:

(1) §39.503(e) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit);

(2) §55.154(c) of this title; or

(3) §352.961(c) of this title (relating to Assessment of Corrective Measures).

(c) Notice of a public meeting shall be provided in accordance with the procedures contained in §39.503(e)(6) of this title, and shall be mailed by the chief clerk to the persons listed in §39.413 of this title (relating to Mailed Notice).

(d) The purpose of a public meeting held on an application submitted under this chapter is to provide information and receive public comment. A public meeting held on an application submitted under this chapter is not a contested case hearing under the Texas Administrative Procedure Act.

*§352.461. General Notice Provisions.*

(a) Notice under this subchapter shall comply with the requirements of:

(1) §39.405 of this title (relating to General Notice Provisions);

(2) §39.407 of this title (relating to Mailing Lists);

(3) §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing);

(4) §39.411 of this title (relating to Text of Public Notice);

(5) §39.413 of this title (relating to Mailed Notice); and

(6) §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(b) This subchapter does not require the executive director to respond to comments, and it does not create an opportunity for a contested case hearing.

*§352.471. Draft Registration.*

Upon the executive director's preliminary determination that an application for a new registration or a major amendment of a registration meets the regulatory requirements for issuance, the executive director shall prepare a draft registration.

*§352.481. Motion to Overturn the Executive Director's Decision.*

The executive director's action on an application for a new registration or an amendment of a registration under this chapter is subject to §50.133(b) and §50.139 of this title (relating to Executive Director Action on Application or WQMP Update; and Motion to Overturn Executive Director's Decision).

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## SUBCHAPTER E. LOCATION RESTRICTIONS

### 30 TAC §§352.601, 352.611, 352.621, 352.631, 352.641

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property

of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.601. Placement Above the Uppermost Aquifer.*

The commission adopts by reference 40 Code of Federal Regulations §257.60 (Placement above the uppermost aquifer) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.611. Wetlands.*

The commission adopts by reference 40 Code of Federal Regulations §257.61 (Wetlands) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.621. Fault Areas.*

The commission adopts by reference 40 Code of Federal Regulations §257.62 (Fault areas) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.631. Seismic Impact Zones.*

The commission adopts by reference 40 Code of Federal Regulations §257.63 (Seismic impact zones) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.641. Unstable Areas.*

The commission adopts by reference 40 Code of Federal Regulations §257.64 (Unstable areas) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

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

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## SUBCHAPTER F. DESIGN CRITERIA

### 30 TAC §§352.701, 352.711, 352.721, 352.731, 352.741

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.701. Design Criteria for Coal Combustion Residuals Landfills.*

The commission adopts by reference 40 Code of Federal Regulations §257.70 (Design criteria for new CCR landfills and any lateral expansion of a CCR landfill) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.711. Liner Design Criteria for Existing Coal Combustion Residuals Surface Impoundments.*

(a) The owner or operator of an existing coal combustion residuals (CCR) surface impoundment must meet the requirements of this section.

(1) The owner or operator of an existing CCR surface impoundment must document whether or not such unit was constructed with any one of the following:

(A) a composite liner that meets the requirements of §352.701 of this title (relating to Design Criteria for Coal Combustion Residuals Landfills); or

(B) an alternative composite liner that meets the requirements of §352.701 of this title.

(2) The hydraulic conductivity of the compacted soil must be determined and documented using recognized and generally accepted methods.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(A) the owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of paragraph (1)(A) or (B) of this subsection; or

(B) the owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph (1)(A) or (B) of this subsection.

(4) All existing unlined CCR surface impoundments are subject to the requirements of §352.1211 of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units).

(b) The owner or operator of the CCR unit must obtain a certification from a licensed professional engineer attesting that the documentation as to whether a CCR unit meets the requirements of subsection (a) of this section is accurate.

(c) The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in §352.1301 of this title (relating to Recordkeeping Requirements), the notification requirements specified in §352.1311 of this title (relating to Notification Requirements), and the internet requirements specified in §352.1321 of this title (relating to Publicly Accessible Internet Site Requirements).

*§352.721. Liner Design Criteria for New and Lateral Expansions of Coal Combustion Residuals Surface Impoundments.*

The commission adopts by reference 40 Code of Federal Regulations §257.72 (Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.731. Structural Integrity Criteria for Existing Coal Combustion Residuals Surface Impoundments.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.73 (Structural integrity criteria for existing

CCR surface impoundments) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the additions set forth in this section.

(b) The owner or operator shall comply with the following.

(1) Upon activation of the Emergency Action Plan under 40 CFR §257.73(a)(3)(v), notify the executive director and appropriate local government officials verbally within 24 hours, and in writing within five days.

(2) Notify the executive director in writing of significant changes to the history of construction as required by 40 CFR §257.73(c)(2) within 14 days.

(3) Notify the executive director in writing of changes to the hazard potential classification within 14 days.

(4) Notify the executive director and appropriate local government officials verbally within 24 hours and in writing within five days if a deficiency under 40 CFR §257.73(d)(2) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.73(d)(2).

(5) Notify the executive director in writing of intent to close a coal combustion residuals surface impoundment in accordance with 40 CFR §257.73(f)(4) within 14 days of:

(A) a failure to meet the minimum safety factors during a safety factor assessment; or

(B) a failure to complete a safety factor assessment in the timeframe prescribed by this section.

*§352.741. Structural Integrity Criteria for New and Lateral Expansions of Coal Combustion Residuals Surface Impoundments.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.74 (Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the additions in this section.

(b) The owner or operator shall comply with the following.

(1) Upon activation of the Emergency Action Plan under 40 CFR §257.74(a)(3)(v), verbally notify the executive director and appropriate local government officials within 24 hours, and in writing within five days.

(2) Notify the executive director in writing within 14 days of significant changes to the design and construction plans under 40 CFR §257.74(c)(2).

(3) Notify the executive director in writing of changes to the hazard potential classification within 14 days.

(4) Notify the executive director and appropriate local government officials verbally within 24 hours, and in writing within five days if a deficiency under 40 CFR §257.74(d)(2) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.74(d)(2).

(5) Notify the executive director in writing of intent to close a coal combustion residuals surface impoundment in accordance with 40 CFR §257.74(f)(4) within 14 days of:

(A) a failure to meet the minimum safety factors during a safety factor assessment; or

(B) a failure to complete a safety factor assessment in the timeframe prescribed by 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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Robert Martinez
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## SUBCHAPTER G. OPERATING CRITERIA

### 30 TAC §§352.801, 352.811, 352.821, 352.831, 352.841, 352.851

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.801. Air Criteria.*

The commission adopts by reference 40 Code of Federal Regulations §257.80 (Air criteria) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.811. Run-On and Run-Off Controls for Coal Combustion Residuals Landfills.*

The commission adopts by reference 40 Code of Federal Regulations §257.81 (Run-on and run-off controls for CCR landfills) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.821. Hydrologic and Hydraulic Capacity Requirements for Coal Combustion Residuals Surface Impoundments.*

The commission adopts by reference 40 Code of Federal Regulations §257.82 (Hydrologic and hydraulic capacity requirements for CCR surface impoundments) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.831. Inspection Requirements for Coal Combustion Residuals Surface Impoundments.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.83 (Inspection requirements for CCR surface impoundments) as amended through the July 2, 2015, issue of the *Federal Register* (80 FR 37988), subject to the addition in this section.

(b) Notify the executive director verbally within 24 hours and in writing within five days if a deficiency under 40 CFR §257.83(b)(5) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.83(b)(5).

*§352.841. Inspection Requirements for Coal Combustion Residuals Landfills.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.84 (Inspection requirements for CCR landfills) as amended through the July 2, 2015, issue of the *Federal Register* (80 FR 37988), subject to the addition in this section.

(b) Notify the executive director verbally within 24 hours and in writing within five days if a deficiency under 40 CFR §257.84(b)(5) could result in harm to human health, the environment, or has resulted in a release. Notify the executive director in writing within 14 days of all other deficiencies under 40 CFR §257.84(b)(5).

*§352.851. Pre-Opening Inspection.*

For a new or lateral expansion of a coal combustion residuals (CCR) landfill or surface impoundment, the owner or operator may not commence CCR disposal or waste management in the new or laterally expanded unit until:

(1) the owner or operator has submitted to the executive director a letter signed by the signatory and a licensed professional engineer stating that the unit has been constructed or expanded in compliance with the specifications of the registration; and

(2) the executive director has inspected the expanded or newly constructed unit and finds it in compliance with the conditions of the registration. If within 15 days of submission of the letter required by paragraph (1) of this section, the owner or operator has not received notice from the executive director of an intent to inspect, then the executive director has waived the opportunity for prior inspection, at which point the owner or operator may commence CCR disposal or waste management.

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

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## SUBCHAPTER H. GROUNDWATER MONITORING AND CORRECTIVE ACTION

### 30 TAC §§352.901, 352.902, 352.911, 351.931, 352.941, 352.951, 352.961, 352.971, 352.981, 352.991

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.901. Applicability.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.90 (Applicability) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435), subject to the changes and additions in this section. All references in this subchapter to 40 CFR §257.95(h) (Assessment monitoring program), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.951(b) of this title (relating to Assessment Monitoring Program). All references in this subchapter to 40 CFR §257.101(a) (Closure or retrofit of CCR units), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.1211(b) of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units).

(b) The requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) are not applicable to coal combustion residuals units as defined in §352.3 of this title (relating to Definitions) and as addressed further in §352.1 of this title (relating to Applicability).

*§352.902. Groundwater Monitoring and Corrective Action Report Submittal.*

The Groundwater Monitoring and Corrective Action Report shall be submitted to the executive director for review no later than 30 days after the report has been placed in the facility's operating record.

*§352.911. Groundwater Monitoring Systems.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.91 (Groundwater monitoring systems) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the additions in this section.

(b) The groundwater monitoring system plan shall be submitted to the executive director for review and approval. The executive director may require the owner or operator to install additional monitoring wells to determine compliance with the requirements of this subchapter.

(c) Changes to an approved groundwater monitoring system required by this section must be approved by the executive director in accordance with §352.131 of this title (relating to Amendments).

(d) Installation, plugging, and abandonment of wells or borings must be done in accordance with 16 TAC Chapter 76 (relating to Licensing and Regulation of Water Well Drillers and Water Well Pump Installers).

*§352.931. Groundwater Sampling and Analysis Requirements.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.93 (Groundwater sampling and analysis requirements) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the addition in this section.

(b) Changes to an approved groundwater sampling and analysis program required by this section must be approved by the executive director in accordance with §352.131 of this title (relating to Amendments).

*§352.941. Detection Monitoring Program.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.94 (Detection monitoring program) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the additions in this section.

(b) After making a determination of a statistically significant increase (SSI) over the background value for any Appendix III constituent adopted by reference in §352.1421 of this title (relating to Appendix III - Constituents for Detection Monitoring) at any monitoring well, the owner or operator shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within 14 days of this determination.

(c) After making a determination of an SSI over the background value for any Appendix III constituent adopted by reference in §352.1421 of this title at any monitoring well, the owner or operator may submit an alternative source demonstration in accordance with 40 CFR §257.94(e)(2) to the executive director for review. In making a demonstration under this section, the owner or operator must:

(1) notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within 14 days that the owner or operator intends to make an alternative source demonstration under this section;

(2) within 90 days of making a determination of an SSI over the background value for any Appendix III constituent adopted by reference in §352.1421 of this title, submit a report prepared and certified in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information), to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, demonstrating that a source other than a coal combustion residuals unit caused the SSI or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality; and

(3) continue to monitor in accordance with the detection monitoring program established under this section.

(d) If the owner or operator does not make an alternative source demonstration under this section satisfactory to the executive director, then the owner or operator shall initiate an assessment monitoring program as required in 40 CFR §257.94(e). The executive director may require the owner or operator to install additional monitoring wells to determine whether the demonstration is satisfactory.

*§352.951. Assessment Monitoring Program.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.95 (Assessment monitoring program) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), excluding 40 CFR §257.95(h), subject to the additions in this section.

(b) The owner or operator of the coal combustion residuals (CCR) unit must establish a groundwater protection standard for each constituent in Appendix IV adopted by reference in §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring) detected in the groundwater. The groundwater protection standard shall be one of the following.

(1) For constituents for which a maximum contaminant level (MCL) has been established under 40 CFR §141.62 (Maximum contaminant levels for inorganic contaminants) and §141.66 (Maximum contaminant levels for radionuclides), the MCL for that constituent.

(2) For the following constituents:

(A) Cobalt: 6 micrograms per liter (µg/l);

(B) Lead: 15 µg/l;

(C) Lithium: 40 µg/l; and

(D) Molybdenum: 100 µg/l.

(3) For constituents for which the background level is higher than the levels identified under paragraphs (1) and (2) of this subsection, the background concentration.

(c) The owner or operator may return to detection monitoring only after satisfying the conditions of 40 CFR §257.95(e), and after obtaining written approval from the executive director.

(d) If a statistically significant increase (SSI) exceeding any groundwater protection standards at any monitoring well has occurred, the owner or operator shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, in writing within seven days of this determination.

(e) If an SSI exceeding any groundwater protection standard at any monitoring well has occurred, then the owner or operator may submit an alternative source demonstration in accordance with 40 CFR §257.95(g)(3) to the executive director for review. In making a demonstration under this subsection, the owner or operator must:

(1) within 90 days of determining an SSI over the groundwater protection standards, submit a report prepared and certified in accordance with §352.4 of this title (relating to Engineering and Geoscientific Information) to the executive director, and any local pollution agency with jurisdiction that has requested to be notified, demonstrating that a source other than a CCR unit caused the SSI or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality; and

(2) continue to monitor in accordance with the assessment monitoring program established under this section.

(f) If the owner or operator does not make an alternative source demonstration under this section satisfactory to the executive director, then the owner or operator shall initiate assessment of corrective measures as required in 40 CFR §257.95(g)(4). The executive director may require the owner or operator to install additional monitoring wells to determine whether the demonstration is satisfactory.

*§352.961. Assessment of Corrective Measures.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.96 (Assessment of corrective measures) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the changes and additions set forth in this section.

(b) Within 30 days of completing the assessment of corrective measures required by this section, and before implementation of the remedy, the owner or operator shall submit an amendment application, on forms prescribed by the executive director, in accordance with §352.131 of this title (relating to Amendments). The owner or operator shall provide any additional information as the executive director may require to determine compliance with this section. The application must include, at a minimum:

(1) documentation that characterizes the nature and extent of the release, both vertically and horizontally, and meets the applicable requirements of §352.951 of this title (relating to Assessment Monitoring Program);

(2) the completed assessment of corrective measures required by this section;

(3) the proposed Selection of Remedy required by §352.971 of this title (relating to Selection of Remedy);

(4) a comparison of the Appendix III constituents adopted by reference in §352.1421 of this title (relating to Appendix III - Constituents for Detection Monitoring) with a statistically significant increase over the background value, and the corresponding background value at each monitoring well;

(5) a comparison of the Appendix IV constituents adopted by reference §352.1431 of this title (relating to Appendix IV - Constituents for Assessment Monitoring) and the corresponding groundwater protection standard meeting the requirements of §352.951(b) of this title at each monitoring well;

(6) a proposed timeline for the submission of the Corrective Action Effectiveness Report required by §352.991 of this title (relating to Corrective Action Effectiveness Report); and

(7) a signed affidavit certifying that the owner or operator has complied with the applicable notification requirements of §352.951 of this title.

(c) An owner or operator subject to this section and the executive director shall provide notice and hold a public meeting in accordance with Subchapter D of this chapter (relating to Registration Application Procedures) to satisfy the requirements of 40 CFR §257.96(e), unless the owner or operator held a public meeting satisfying the requirements of 40 CFR §257.96(e) prior to the application submission.

*§352.971. Selection of Remedy.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.97 (Selection of remedy) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the addition in this section.

(b) The final remedy selection shall be achieved through issuance of the registration amendment required under §352.961 of this title (relating to Assessment of Corrective Measures).

*§352.981. Implementation of the Corrective Action Program.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.98 (Implementation of the corrective action program) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301), subject to the modifications and additions in this section.

(b) Prior to returning to detection monitoring or assessment monitoring, the owner or operator must submit documentation that demonstrates that the requirements of this section have been fulfilled, and the remedy has been achieved for the impacted property. The documentation submitted must include at a minimum:

(1) all analytical data prepared and presented in accordance with §352.931 of this title (relating to Groundwater Sampling and Analysis Requirements) that demonstrates achievement of the remedy;

(2) a narrative discussion of how the requirements of this section have been fulfilled for the impacted property; and

(3) a description of the volume and final disposal location, and a copy of any waste manifests or other documentation of disposition, for waste or environmental media which were removed from the impacted property.

(c) The owner or operator may return to either detection monitoring or assessment monitoring only after satisfying the conditions of this section, and after obtaining written approval from the executive director.

(d) All coal combustion residuals managed under a remedy required under §352.971 of this title (relating to Selection of Remedy), or an interim measure required under this section, shall be managed in a manner that complies with all applicable United States Resource Conservation and Recovery Act and state requirements.

*§352.991. Corrective Action Effectiveness Report.*

The owner or operator shall provide the following information in a Corrective Action Effectiveness Report (CAER):

(1) a summary of the corrective actions taken since the last reporting period;

(2) a statistical comparison of the following groundwater monitoring data in accordance with §352.931 of this title (relating to Groundwater Sampling and Analysis Requirements):

(A) the groundwater protection standards;

(B) the initial exceedances of the groundwater protection standards of §352.951(b) of this title (relating to Assessment Monitoring Program); and

(C) the current (i.e., at the time of CAER submittal) exceedances of the groundwater protection standards of §352.951(b) of this title;

(3) an estimate of the percentage of the corrective actions which have been completed;

(4) an estimate, in years, of the additional time necessary to complete the corrective actions;

(5) a determination whether sufficient progress is being made to achieve the selected remedy within a reasonable timeframe, given the circumstances of an impacted property; and

(6) any other information as required by the executive director.

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

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## SUBCHAPTER I. FINANCIAL ASSURANCE

**30 TAC §352.1101, §352.1111**

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform

any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.1101. Financial Assurance Required.*

(a) Applicability. This subchapter applies to owners and operators required to perform post-closure care as set out in Subchapter J of this chapter (relating to Closure and Post-Closure Care). Financial assurance shall be established and maintained for the duration of the post-closure care period as prescribed in §352.1241 of this title (relating to Post-Closure Care Requirements).

(b) Cost estimate. The owner or operator shall prepare and include with the application for registration, a written cost estimate in current dollars of the total cost of the 30-year post-closure care period to perform post-closure care requirements as prescribed in §352.1241 of this title. The cost estimate shall be based on the costs of hiring a third-party to conduct post-closure care maintenance. The most recent of these cost estimates approved by the executive director is termed as the post-closure care cost estimate.

(c) Mechanism. No more than 90 days after the executive director's approval of the registration, a financial assurance mechanism acceptable to the executive director must be submitted for the cost of post-closure care in an amount no less than the amount specified in the approved cost estimate. Financial assurance for post-closure care shall be demonstrated in compliance with Chapter 37, Subchapters A - D of this title (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action), except as indicated in §352.1111 of this title (relating to Exceptions).

(d) Post-closure care financial assurance beyond the initial 30 years. Owners and operators unable to make a demonstration for ending the post-closure care period in accordance with §352.1241 of this title, shall continue to maintain financial assurance for the post-closure care period specified in §352.1241 of this title. At least 180 days before the end of the preceding post-closure care period, a written cost estimate in current dollars shall be prepared and submitted for the cost of continuing the post-closure care specified in the registration for the additional period specified in §352.1241 of this title. The cost estimate shall be based on the cost of hiring a third-party to perform the post-closure care. A financial assurance mechanism acceptable to the executive director shall be submitted for the continued post-closure care period in an amount approved by the executive director. Financial assurance for post-closure care shall be demonstrated in compliance with Chapter 37, Subchapters A - D of this title except as indicated in §352.1111 of this title.

(e) Executive director executed post-closure care. The executive director may use or direct the use of post-closure care funds to perform post-closure care at a coal combustion residuals unit when the executive director determines that a person has failed to perform the post-closure care required under Subchapter J of this chapter.

*§352.1111. Exceptions.*

Exceptions to the financial assurance requirements of Chapter 37, Subchapters A - D of this title (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action) as specified in §352.1101 of this title (relating to Financial Assurance Required) include:

(1) §37.31 of this title (relating to Submission of Documents) is not applicable;

(2) a pay-in trust as described in §37.201 of this title (relating to Trust Fund) may not be used;

(3) the owner or operator authorized to use insurance as a financial assurance mechanism must use the insurance endorsement approved by the executive director rather than the certificate of insurance specified by §37.241(c) of this title (relating to Insurance);

(4) the owner or operator using a financial test as described in §37.251 of this title (relating to Financial Test), or a corporate guarantee as described in §37.261 of this title (relating to Corporate Guarantee), must comply with §37.141 of this title (relating to Increase in Current Cost Estimate), except that mechanism increases must be made no later than 90 days after the close of each succeeding fiscal year;

(5) the owner or operator using a local government financial test as described in §37.271 of this title (relating to Local Government Financial Test), or a local government guarantee as described in §37.281 of this title (relating to Local Government Guarantee), must comply with §37.141 of this title, except that mechanism increases must be made within 180 days after the close of each succeeding fiscal year;

(6) insurance as specified in §37.241 of this title and paragraph (3) of this section may not be used if closure of the coal combustion residuals unit has been completed as specified in §352.1211 of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units);

(7) the wording of an instrument under Chapter 37, Subchapter D of this title used to satisfy a financial assurance condition shall be revised to replace the term "permit numbers" with the term "registration numbers."

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## SUBCHAPTER J. CLOSURE AND POST-CLOSURE CARE

### 30 TAC §§352.1200, 352.1201, 352.1211, 352.1221, 352.1231, 352.1241

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.1200. General.*

All references in this subchapter to 40 Code of Federal Regulations (CFR) §257.95(h) (Assessment monitoring program), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.951(b) of this title (relating to Assessment Monitoring Program). All references in this subchapter to 40 CFR §257.101(a) (Closure or retrofit of CCR units), including those adopted by reference from 40 CFR Part 257, Subpart D, are changed to §352.1211(b) of this title (relating to Closure or Retrofit of Coal Combustion Residuals Units).

*§352.1201. Inactive Coal Combustion Residuals Surface Impoundments.*

The commission adopts by reference 40 Code of Federal Regulations §257.100 (Inactive surface impoundment) as amended through the August 5, 2016, issue of the *Federal Register* (81 FR 51802).

*§352.1211. Closure or Retrofit of Coal Combustion Residuals Units.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.101 (Closure or retrofit of CCR units) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435), excluding 40 CFR §257.101(a), subject to the additions in this section.

(b) The owner or operator of an existing unlined coal combustion residuals (CCR) surface impoundment, as determined under §352.711 of this title (relating to Liner Design Criteria for Existing Coal Combustion Residuals Surface Impoundments), is subject to the following requirements:

(1) No later than October 31, 2020, the owner or operator of the existing unlined CCR surface impoundment must cease placing CCR and non-CCR waste streams into the CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of §352.1221 of this title (relating to Criteria for Conducting the Closure or Retrofit of Coal Combustion Residuals Units).

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph (1) of this subsection must include a statement in the notification required under §352.1221 of this title that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph (1) of this subsection.

(3) The timeframe specified in paragraph (1) of this subsection does not apply if the owner or operator complies with the alternative closure procedures specified in §352.1231 of this title (relating to Alternative Closure Requirements).

(4) At any time after the initiation of closure under paragraph (1) of this subsection, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of §352.1221 of this title.

*§352.1221. Criteria for Conducting the Closure or Retrofit of Coal Combustion Residuals Units.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.102 (Criteria for conducting the closure or retrofit of CCR units) as amended through the August 5, 2016, issue of the *Federal Register* (81 FR 51802).

(b) Before a closure certification for a coal combustion residuals unit in a registration may be issued by the executive director, a financial assurance mechanism other than insurance and that is acceptable to the executive director and authorized by Subchapter I of this chapter (relating to Financial Assurance) must be in place and approved by the executive director.

*§352.1231. Alternative Closure Requirements.*

The commission adopts by reference 40 Code of Federal Regulations §257.103 (Alternative closure requirements) as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301).

*§352.1241. Post-Closure Care Requirements.*

(a) The commission adopts by reference 40 Code of Federal Regulations (CFR) §257.104 (Post-closure care requirements) as amended through the August 5, 2016, issue of the *Federal Register* (81 FR 51802), subject to the additions under this section.

(b) The owner or operator shall submit to the executive director:

(1) a copy of the notification of completion of post-closure care period required by 40 CFR §257.104(e); and

(2) a demonstration that the coal combustion residuals (CCR) unit poses no threat to human health, the environment, or property.

(c) The post-closure period shall be extended until the executive director approves a demonstration that the CCR unit poses no threat to human health, the environment, or property. The financial assurance required in §352.1101(d) of this title (relating to Financial Assurance) shall be continued until such time that the executive director determines that post-closure care is no longer needed.

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## SUBCHAPTER K. RECORDKEEPING, NOTIFICATION, AND POSTING OF INFORMATION TO THE INTERNET

### 30 TAC §§352.1301, 352.1311, 352.1321

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.1301. Recordkeeping Requirements.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.105 (Recordkeeping requirements) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435), subject to the modification in this section.

(b) The owner or operator shall retain records of groundwater monitoring and associated groundwater surface elevations for the active life and the post-closure care period of the coal combustion residuals unit.

*§352.1311. Notification Requirements.*

The commission adopts by reference 40 Code of Federal Regulations §257.106 (Notification requirements) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435).

*§352.1321. Publicly Accessible Internet Site Requirements.*

(a) The commission adopts by reference 40 Code of Federal Regulations §257.107 (Publicly accessible Internet site requirements) as amended through the July 30, 2018, issue of the *Federal Register* (83 FR 36435), subject to the additions and modifications in this section.

(b) The Coal Combustion Residuals Rule Compliance Data and Information website (CCR website) the owner or operator is required to maintain under this section shall be a publicly accessible website.

(c) The owner or operator shall post on the CCR website, upon submittal to or receipt from the executive director or the chief clerk for the active life of the coal combustion residuals unit through the completion of the post-closure care period:

(1) a complete copy of the current issued effective registration;

(2) a complete copy of all applications submitted under this chapter, including any revisions;

(3) a copy of public notice the owner or operator is required to publish under this chapter;

(4) a copy of a draft registration;

(5) a copy of the compliance summary; and

(6) a copy of any other document regarding and/or summarizing the executive director's review of or initial decision on an application submitted under this chapter.

(d) The owner or operator must notify the United States Environmental Protection Agency and the executive director, in a manner prescribed by each agency, within 14 days of any changes to the URL for the publicly accessible website.

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 November 22, 2019.

TRD-201904474
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 239-6812

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## SUBCHAPTER L. APPENDICES

### 30 TAC §§352.1401, 352.1421, 352.1431

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by the TWC and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.090, which allows the commission to adopt rules to control the collection, handling, storage, processing, and disposal of industrial solid waste to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

The proposed new rules implement THSC, §§361.017, 361.024, and 361.090.

*§352.1401. Appendix I - Maximum Contaminant Levels Promulgated Under the Federal Safe Drinking Water Act.*

The following appendix contained in 40 Code of Federal Regulations Part 257, Subpart D, is adopted by reference: Appendix I--Maximum Contaminant Levels (as amended through the October 9, 1991, issue of the *Federal Register* (56 FR 51016)).

*§352.1421. Appendix III - Constituents for Detection Monitoring.*

The following appendix contained in 40 Code of Federal Regulations Part 257, Subpart D, is adopted by reference: Appendix III--Constituents for Detection Monitoring (as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301)).

*§352.1431. Appendix IV - Constituents for Assessment Monitoring.*

The following appendix contained in 40 Code of Federal Regulations Part 257, Subpart D, is adopted by reference: Appendix IV--Constituents for Assessment Monitoring (as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301)).

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 November 22, 2019.

TRD-201904475
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 239-6812

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER F. MOTOR VEHICLE SALES TAX

**34 TAC §3.96**

The Comptroller of Public Accounts proposes an amendment to §3.96, concerning the imposition and collection of a surcharge on certain diesel powered motor vehicles. The comptroller proposes to amend the section to reflect the changes in Tax Code, §152.0215 (Texas Emissions Reduction Plan Surcharge) made by House Bill 3745, 86th Legislature, 2019.

Subsection (g) is amended to change the expiration date of the surcharge from August 31, 2019, to the last day of the fiscal biennium during which Texas Commission on Environmental Quality publishes in the *Texas Register* the notice required by Health and Safety Code, §382.037 (Notice in Texas Register Regarding National Ambient Air Quality Standards for Ozone).

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendment would have no fiscal impact on the state government, units of local government, or individuals.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §152.0215 (Texas Emissions Reduction Plan Surcharge).

*§3.96. Imposition and Collection of a Surcharge on Certain Diesel Powered Motor Vehicles.*

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

(1) Motor vehicle subject to surcharge--An on-road motor vehicle that is diesel powered and registered with a gross vehicle weight in excess of 14,000 pounds; the surcharge does not apply to a recreational vehicle, as that term is defined by Transportation Code, §522.004(b), that is not held or used for the production of income. See §3.320 of this title (relating to Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel Equipment) for information about the imposition of the surcharge to certain equipment.

(2) Lease--An agreement, other than a rental, whereby an owner of a motor vehicle gives exclusive use of the vehicle to another for consideration for a period that is more than 180 days.

(3) Rental--An agreement whereby:

(A) the owner of a motor vehicle gives exclusive use of the vehicle to another for consideration for a period that is 180 days or less;

(B) the original manufacturer of a motor vehicle gives exclusive use of the motor vehicle to another for consideration; or

(C) the owner of a motor vehicle gives exclusive use of the vehicle to another for re-rental purposes.

(4) Surcharge--A fee imposed on a retail sale or use in this state of a motor vehicle described in paragraph (1) of this subsection. The surcharge is imposed by Tax Code, §152.0215, for the benefit of the Texas Emission Reduction Plan Fund as provided in Health and Safety Code, §386.251.

(b) Payment, calculation, collection and remittance. Except as provided in subsection (c) of this section, the surcharge is paid, calculated, collected, and remitted in the same manner as the tax imposed on a Texas sale as provided in Tax Code, Chapter 152, and §3.74 of this title (relating to Seller Responsibility). The fee is 1.0% of the total consideration paid for a motor vehicle subject to surcharge that is a model year 1997 or later, or 2.5% on a motor vehicle subject to surcharge that is a model year 1996 or earlier.

(c) Motor vehicles purchased for rental or lease.

(1) Rental. A person who purchases or brings into Texas a motor vehicle for rental must pay the surcharge at the time of registration and titling. Payment of the surcharge cannot be deferred even if the purchaser is allowed to defer the motor vehicle sales and use tax. The surcharge is not due on the rental receipts paid to the motor vehicle owner.

(2) Lease. A person who purchases or brings into Texas a motor vehicle for lease must pay the surcharge based on the total consideration paid by the owner at the time of registration and titling. The surcharge is not due on the lease receipts paid to the motor vehicle owner.

(d) A motor vehicle subject to surcharge that is brought into Texas for use by a new resident of this state is subject to the surcharge.

(e) Exemptions. The exemptions provided in Tax Code, Subchapter E, Chapter 152, apply to the surcharge.

(f) The surcharge may not be offset by sales or use tax paid to other states on the purchase of a motor vehicle subject to surcharge.

(g) Expiration. The surcharge expires on the last day of the state fiscal biennium during which the Texas Commission on Environmental Quality publishes in the *Texas Register* the notice required by Health and Safety Code, §382.037 [~~August 31, 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 November 26, 2019.

TRD-201904497
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 475-0387

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
### SUBCHAPTER A. ACCREDITATION

**37 TAC §651.4**

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.4 to recognize a change in the administration of the American Board of Forensic Toxicology ("ABFT") forensic toxicology accreditation program. Under a "strategic alliance" between the ANSI-ASQ National Accreditation Board ("ANAB") and the American Board of Forensic Toxicology ("ABFT"), ABFT's forensic toxicology accreditation program is now administered by ANAB. In addition to the ABFT program administered by ANAB, the Commission also recognizes accreditation by ANAB in the following forensic disciplines: seized drugs, forensic toxicology, forensic biology/dna, firearms/toolmarks, and materials (trace). In sum, the proposed amendment makes clear to affected crime laboratories, attorneys and judges that the Commission recognizes accreditation for crime laboratories that are accredited to perform forensic toxicology under any of the following ABFT/ANAB programs: 1) solely by ABFT for laboratories that have not yet transitioned to the ANAB-administered program; 2) solely by ANAB; or 3) under the new ABFT program administered by ANAB. The amendments are necessary to reflect adoptions made by the Commission at its October 25, 2019 quarterly meeting. The amendments are made in accordance with the Commission's accreditation authority under Tex. Code. Crim. Proc. art. 38.01§4-d.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment clarifies the Commission's recognition of accreditation for crime laboratories that perform toxicology analyses in light of the change in administration of ABFT's forensic toxicology accreditation program.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be increased clarity for attorneys and judges who rely in part on the Commission's rules to assess admissibility of forensic analysis in the forensic toxicology discipline. Admissibility of forensic analysis is based in part on the accreditation status of the entity performing the analysis under Article 38.35 of the Code of Criminal Procedure. Clear administrative rule language regarding the status of the recognized national accrediting bodies is important to the efficient and accurate evaluation of admissibility under Texas law.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The amendment clarifies the Commission's recognition of accreditation for crime laboratories that perform toxicology analyses in light of the change in administration of ABFT's forensic toxicology accreditation program.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The amendment clarifies its recognition of accreditation for crime laboratories that perform toxicology analy-

ses in light of the change in administration of ABFT's forensic toxicology accreditation program.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 21, 2020 to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §§3-a and 4-d.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.4.

*§651.4. List of Recognized Accrediting Bodies.*

(a) The Commission recognizes the accrediting bodies in this subsection, subject to the stated discipline or category of analysis limitations:

~~[(1) American Board of Forensic Toxicology (ABFT)--recognized for accreditation of toxicology discipline only.]~~

(1) [~~(2)~~] ANSI-ASQ National Accreditation Board (ANAB)--recognized for accreditation of all disciplines which are eligible for accreditation under this subchapter as well as for the administration of the American Board of Forensic Toxicology (ABFT) forensic toxicology accreditation program.

(2) [~~(3)~~] Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (HHS/SAMHSA), formerly known as the National Institute on Drug Abuse of the Department of Health and Human Services (HHS/NIDA)--recognized for accreditation of toxicology discipline in the category of analysis for Urine Drug Testing for all classes of drugs approved by the accrediting body.

(3) [~~(4)~~] College of American Pathologists (CAP) Forensic Drug Testing Accreditation Program only--recognized for accreditation of toxicology discipline.

(4) [~~(5)~~] American Association for Laboratory Accreditation (A2LA)--recognized for accreditation of all disciplines which are eligible for accreditation under this chapter.

(b) If an accrediting body is recognized under subsection (a) of this section and the recognized body approves a new discipline, category of analysis or procedure, the Commission may temporarily recognize the new discipline, category of analysis or procedure. A temporary approval shall be effective for 120 days.

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

Filed with the Office of the Secretary of State on November 21, 2019.

TRD-201904418
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-0661

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# SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

## 37 TAC §651.306

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 TAC §651.306 outlining Commission staff's authority to dismiss complaints concerning certain activities that do not meet the definition of forensic analysis under Texas law. Subject to review by the Commission, the current rules allow the Commission's General Counsel to dismiss any complaint involving activities that do not meet the definition of "forensic analysis" set forth in Article 38.35(a)(4) of the Code of Criminal Procedure because the activities described do not constitute expert examinations or tests on physical evidence. The amendments proposed here delegate additional authority to the General Counsel to dismiss a complaint if the expert examination or test described falls within one of the following categories expressly exempt by Article 38.35(a)(4) of the Code of Criminal Procedure: (1) presumptive tests performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or (2) expert examinations or tests conducted principally for the purpose of scientific research, medical practice, civil, or administrative litigation, or other purpose unrelated to determining the connection of the physical evidence to a criminal action. The amendments are necessary to reflect adoptions made by the Commission at its October 25, 2019 quarterly meeting. The adoptions were made in accordance with the Commission's authority under Article 38.01 §4(a)(3), Code of Criminal Procedure which requires the Commission to investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendments delegate to the Commission's General Counsel the authority to dismiss certain types of complaints pursuant to the limitations set forth in Article 38.35(a)(4) of the Code of Criminal Procedure as described above. The amendments do not change the Commission's investigative scope or authority or impact the number of cases the Commission may investigate. The amendments allow the General Counsel to screen and dismiss complaints if she determines they fall within certain exemptions set forth in Article 38.35(a)(4) of the Code of Criminal Procedure as described above.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be

greater efficiency in the processing of complaints by the Commission, because the General Counsel will be able to screen and dismiss complaints that fall into certain exempt categories under Article 38.35(a)(4), thereby reducing the amount of time required for consideration by the full Commission during quarterly meetings.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The amendments proposed here delegate additional authority to the General Counsel to dismiss a complaint if the expert examination or testing described in the complaint falls within one of the following categories expressly exempt by Article 38.35(a)(4) of the Code of Criminal Procedure: (1) presumptive tests performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or (2) expert examinations or tests conducted principally for the purpose of scientific research, medical practice, civil, or administrative litigation, or other purpose unrelated to determining the connection of the physical evidence to a criminal action.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposed amendments delegate authority to the General Counsel to dismiss certain complaints if the examination or testing described falls within one of the following categories expressly exempt by Article 38.35(a)(4): (1) presumptive tests performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or (2) expert examinations or tests conducted principally for the purpose of scientific research, medical practice, civil, or administrative litigation, or other purpose unrelated to determining the connection of the physical evidence to a criminal action. The amendments do not change the Commission's investigative scope or authority or impact the number of cases the Commission may investigate, but rather allow for more efficient screening of complaints by Commission staff.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or *leigh@fsc.texas.gov.* Comments must be received by January 21, 2020 to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §§3-a and 4(a)(3).

Cross reference to statute. The adoption affects 37 TAC §651.306.

*§651.306. Dismissal for Lack of Jurisdiction.*

(a) Autopsy-related complaints. The Commission's General Counsel may dismiss complaints related to the portion of an autopsy conducted by a medical examiner or licensed physician as falling outside the Commission's statutory jurisdiction without bringing the complaint before the Complaint Screening Committee or a quorum of Commissioners for consideration.

(b) DNA mixture complaints. The General Counsel may refer complaints and requests involving DNA mixtures to the statewide DNA Mixture Triage Team or other responsible entity without bringing the complaints and requests before the Complaint Screening Committee or a quorum of Commissioners for consideration. The General Counsel shall provide the total number of complaints and inquiries referred to the statewide DNA Mixture Triage Team to the Commission at each quarterly meeting during which such referrals are made.

(c) Non-forensic analysis [~~Non-physical evidence~~] complaints.

(1) The General Counsel may dismiss the following categories of complaints without bringing the complaints before the Complaint Screening Committee or a quorum of Commissioners for consideration:

(A) those the General Counsel does not consider to include a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action;

(B) those the General Counsel believes constitute a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(C) those the General Counsel believes constitute an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of the evidence to a criminal action. [~~not related to an examination or test on physical evidence, because such complaints fall outside the Commission's jurisdiction as they are not "forensic analysis" complaints as defined by Article 38.35, Code of Criminal Procedure.~~]

(d) Right to re-open. Any Commission member has a right to reopen cases dismissed pursuant to subsections (a)-(c) of this section. Commission staff must maintain a list of complaints dismissed under this subsection [~~for periodic distribution to Commission members~~].

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 November 21, 2019.

TRD-201904417

Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: January 12, 2020
For further information, please call: (512) 936-0661

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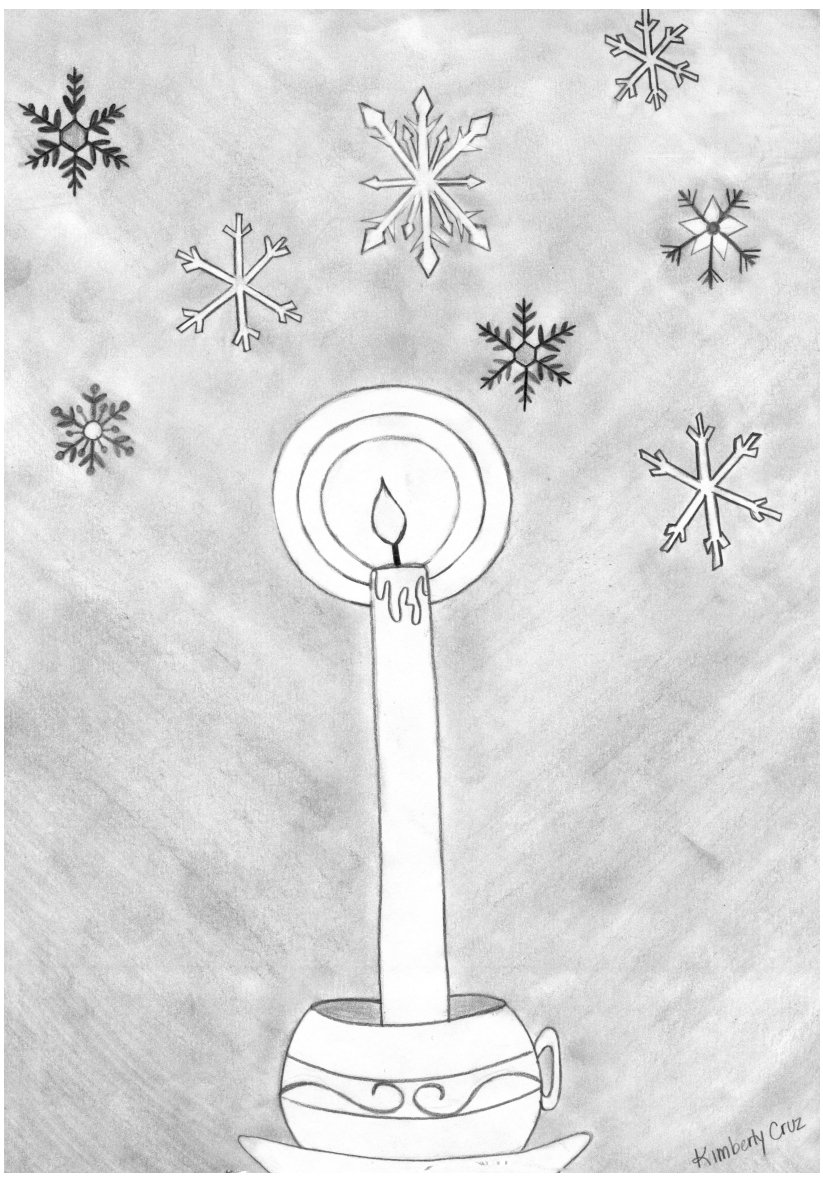
Kimberly Cruz

# 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 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

**22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.43**

The Texas Real Estate Commission withdraws the proposed amendments §§537.20, 537.28, 537.30 - 537.32, 537.37, and 537.43, which appeared in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4654).

Filed with the Office of the Secretary of State on November 22, 2019.

TRD-201904451
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: November 22, 2019
For further information, please call: (512) 936-3177

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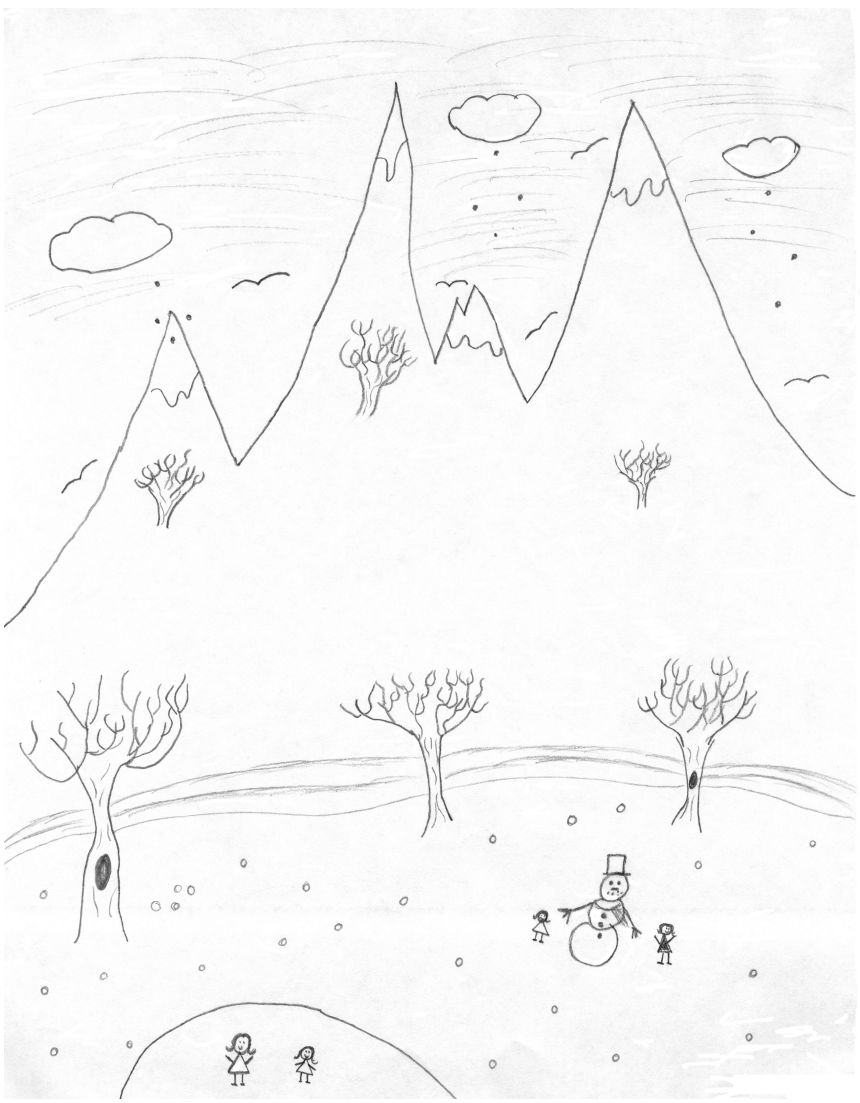

# ADOPTED RULES

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 10. DEPARTMENT OF INFORMATION RESOURCES

### CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Texas Department of Information Resources (department) adopts amendments to 1 TAC Chapter 213, §§213.1, 213.2, 213.10 - 213.13, 213.15 - 213.21, 213.30, 213.32, 213.33, 213.35 - 213.41, concerning Electronic and Information Resources, without changes to the proposal as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5203); therefore the rules will not be republished. The departments adopts amendment to 1 TAC Chapter 213, §213.31, concerning Electronic and Information Resources, with nonsubstantive changes to the September 20, 2019, issue of the *Texas Register* (44 TexReg 5203); therefore, the rule will be republished. In addition, the department adopts two new sections, §213.22 and §213.42, and the repeal of §213.14 and §213.34, without changes.

The adopted rules apply to both state agencies and institutions of higher education.

The adopted changes include but are not limited to the addition of new definitions and the modification of some existing definitions in §213.1; amendment of accessibility standards to incorporate by reference existing federal law in §§213.10 - 213.16 and §§213.30 - 213.36; requirements in §213.18 and §213.38 for commodity procurement contracts; and requirements in §213.21 and §213.41 regarding agency and institution of higher education accessibility policies and accessibility coordinator positions.

In §213.1, the department approves the addition of the following definitions because of new or revised content in Chapter 213: "Completed Accessibility Conformance Report"; "Agency Head"; "Commercial off-the-shelf product"; "Electronic and information resources (EIR) Development Services"; "Hardware"; "Worldwide Web Consortium Web Content Accessibility Guidelines 2.0." DIR has also added a reference to all terms stated in Section 508 Appendices A and C.

The definitions of "Electronic and Information Resources (EIR)" and "Section 508" have been broadened for clarification; and the definition for "Exception" has been changed to include the phrase "agency head" rather than "Executive Director of an Agency." The department approves the deletion the definitions for "Information Technology", which is now included in the definition for "Electronic and Information Resources," and "TTY" as it is no longer applicable for new or revised content in Chapter 213.

In addition, the department approves the correction of references to Texas Administrative Code and Texas Government Code in compliance with legal grammatical standards in §§213.10 - 213.22 (for state agencies) and §§213.30 - 213.42 (for institutions of higher education) for clarity. The definition "agency head" has been approved for replacement of the existing term "Executive Director in §§213.10 - 213.22.

The department further approves an effective date of April 18, 2020, to permit agencies and institutions of higher education to become compliant with the proposed rules.

In §213.10, for state agencies, and §213.30, for institutions of higher education, the department approves the removal of outdated federal standards from rule.

In §213.11, for state agencies, and §213.31, for institutions of higher education, the department approves striking the standards for telecommunications products as under current federal standards, the telecommunications industry, rather than governmental entities, are subject to these requirements. The department approves amendments requiring contractual language obligating manufacturers of telecommunications equipment or providers of telecommunication services to assert compliance with federal law when such compliance is achievable.

In §213.12, for state agencies, and §213.32, for institutions of higher education, the department approves removing outdated federal standards from rule. The approved language incorporates by reference the standards for video and multimedia products articulated by federal law. The department further approves new language requiring consideration of captioning and alternative forms of accommodation when such request is received by an entity.

In §213.13, for state agencies, and §213.33, for institutions of higher education, the department approves amending the title from "Self Contained, Closed Products" to "Hardware." The approved amendments remove outdated federal standards from rule. The approved language incorporates by reference the standards for hardware articulated by federal law.

The department approves the repeal of §213.14, for state agencies, and §213.34, for institutions of higher education, as these requirements are no longer imposed upon state agencies by the relevant federal statutes.

In §213.15, for state agencies, and §213.35, for institutions of higher education, the department approves removing outdated federal standards from rule. The department approves clarifying language requiring compliance with this section only where EIR is noncompliant with other relevant sections as currently articulated by federal law.

In §213.16, for state agencies, and §213.36, for institutions of higher education, the department approves renaming the rule for clarity. The department further approves removing existing language regarding outdated federal standards. The approved language incorporates by reference the standards for support documentation and services articulated by federal law.

In §213.17, for state agencies, and §213.37, for institutions of higher education, the department approves adding language to clarify accessibility requirements for legacy EIR. The department approves clarifying language for exceptions based on significant difficulty or expense and includes new language identifying the time frame in which an exception might be sought. Documentation required to approve an exception now includes evidence of consideration of alternative solutions.

In §213.18, for state agencies, and §213.38, for institutions of higher education, the department approves requiring vendor provision of certain accessibility information during the procurement of the department's commodity procurement contracts, entity purchase off a department commodity procurement contract, or made directly by the entity. The approved amendments further provide that completed accessibility conformance reports may be submitted in lieu of a VPAT. The approved amendments also assert that EIR shall be considered noncompliant if these documents cannot be provided. The department amends the existing provision requiring accessibility testing for projects to require additional documentation of accessibility testing, planning, and execution criteria for the project. The approved amendment applies to any EIR project that would meet MIRP criteria but lowers the monetary threshold to trigger this provision to $500,000.

In §213.19, for state agencies, and §213.39, for institutions of higher education, the department approves eliminating the requirement that the department provide training regarding compliance with accessibility rules. The approved rules also add a requirement that accessibility criteria shall be considered for inclusion in job descriptions where the position is responsible for EIR accessibility matters.

In §213.20, for state agencies, and §213.40, for institutions of higher education, the approved rule expands the material gathered for the accessibility survey to include progress made towards compliance with accessibility rules.

In §213.21, for state agencies, and §213.41, for institutions of higher education, the department approves requiring the EIR plan be agency approved and removes the requirement that it be published. The approved amendment requires that the EIR plan include information on how EIR will be maintained in compliance with accessibility rules. The department also approves clarification regarding organizational placement of the EIR Accessibility Coordinator position to ensure effectiveness.

In §213.22, for state agencies, and §213.42, for institutions of higher education, the department approves the establishment of a holdover provision to ensure that state agencies and institutions of higher education remain in compliance with the existing rule until the effective date of the proposed rule.

The department received a comment from an external stakeholder regarding a typographical error found in §213.31. The department has incorporated this change.

The adoption applies to both state agencies and institutions of higher education and was submitted to the Information Technology Council for Higher Education (ITCHE) for review. ITCHE determined that there was no impact upon institutions of higher education as a result of the amendment.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §213.1, §213.2

The amendments are adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and Texas Government Code §2054.453, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

No other code, article or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2019.

TRD-201904460
Robert Schneider
General Counsel
Department of Information Resources
Effective date: December 12, 2019
Proposal publication date: September 20, 2019
For further information, please call: (512) 475-4552

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## SUBCHAPTER B. ACCESSIBILITY STANDARDS FOR STATE AGENCIES

### 1 TAC §§213.10 - 213.13, 213.15 - 213.22

The amendments and new section are adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and Texas Government Code §2054.453, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

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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### 1 TAC §213.14

The repeal is adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and Texas Government Code §2054.453, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. ACCESSIBILITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §§213.30 - 213.33, 213.35 - 213.42

The amendments and new section are adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and Texas Government Code §2054.453, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

*§213.31. Telecommunications Products.*

Effective April 18, 2020, unless an exception is approved by the president or chancellor of an institution of higher education or an exemption has been made for specific technologies pursuant to 1 Texas Administrative Code §213.37, when purchasing telecommunication equipment or services, an institution of higher education shall contractually require the manufacturer of telecommunication equipment or provider of telecommunication services to ensure that the equipment or services are in compliance with 47 U.S.C. §255 and 36 C.F.R. §1194.2, Appendix B, when such products are readily available or compliance is achievable.

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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### 1 TAC §213.34

The repeal is adopted under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and Texas Government Code §2054.453, which authorizes the department to adopt rules in compliance with federal standards and laws regarding the development, procurement, maintenance, and use of electronic information resources by state agencies to provide access to individuals with disabilities.

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 16. ECONOMIC REGULATION

## PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

## CHAPTER 31. ADMINISTRATION

### 16 TAC §31.13

The Texas Alcoholic Beverage Commission adopts new 16 TAC §31.13, Enhanced Contract Monitoring, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5836). The rule will not be republished.

As required by Senate Bill 20, 84th Texas Legislature (Regular Session, 2015), this rule requires the commission to identify contracts that require enhanced monitoring, provides factors to be considered in identifying these contracts, and requires monitoring reports to be provided to the executive director and/or Commissioners.

No comments were received.

The new rule is authorized by Texas Government Code §2261.253(c), which requires each state agency to establish by rule a procedure for identifying contracts for enhanced monitoring, and by §28 of Senate Bill 20, 84th Texas Legislature (Regular Session, 2015), requiring all affected state agencies to adopt rules to implement the changes in law made by the bill.

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-201904505
Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3208

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## CHAPTER 33. LICENSING
## SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

### 16 TAC §33.28

The Texas Alcoholic Beverage Commission adopts new 16 TAC §33.28, Consumer Delivery Permit Fee, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5836). The rule will not be republished.

This rule provides that the annual fee for a statewide permit to deliver alcoholic beverages to consumers, as authorized in new Chapter 57 of the Alcoholic Beverage Code, is $5,000.

No comments were received.

The rule is adopted pursuant to Alcoholic Beverage Code §57.03, which authorized the agency to create the fee.

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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Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3208

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### 16 TAC §33.29

The Texas Alcoholic Beverage Commission adopts new 16 TAC §33.29, Registration of Nonresident Brewer's Agent and Nonresident Manufacturer's Agent, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5837). The rule will not be republished.

This rule requires that agents acting on behalf of nonresident brewers and nonresident manufacturers register with the commission and pay an annual fee of $2,500.

No comments were received.

The new rule is authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3280

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## CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

### 16 TAC §34.3

The Texas Alcoholic Beverage Commission adopts amended 16 TAC §34.3, Schedule of Sanctions and Penalties for Major Regulatory Violations, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5838). The rule will not be republished.

The amended rule establishes penalties for exceeding the volume limitation for sales to consumers by certain brewers and manufacturers under Alcoholic Beverage Code Sections 12.052 and 62.122. The amendments provide for a written warning upon the first offense; a three-day license or permit suspension or $500 per day fine for a second violation; and a five-day license or permit suspension or $1,000 per day fine for a third violation.

No comments were received.

The amendments are authorized by Alcoholic Beverage Code §12.052(g) and §62.122(g), directing the commission to adopt rules establishing administrative penalties for violations under those statutes; and by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3208

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## CHAPTER 41. AUDITING

## SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

### 16 TAC §41.57

The Texas Alcoholic Beverage Commission adopts new 16 TAC §41.57, relating to Warehouse Registration, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5838). The rule will not be republished.

Section 214 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019) added subsection (e) to Alcoholic Beverage Code §62.08. Effective September 1, 2019, subsection (e) requires that the holder of a manufacturer's or distributor's license must register with the commission each warehouse used by the manufacturer or distributor to store beer. The subsection also requires the commission by rule to determine the information that is required to register a warehouse under this subsection. Effective September 1, 2021, the subsection will require registration by the holder of a brewer's or distributor's license of each warehouse utilized to store malt beverages.

The new rule requires that manufacturers and distributors required to register a warehouse with the commission provide the warehouse's address and such other information as may be required on a form prescribed by the commission. No warehouse may be operated until the form is received by the commission's licensing division.

The new rule also specifies that each registered warehouse is a place of business of the license holder for purposes of two sections of the commission's rules: §41.23, relating to General Records Required; and §41.25, relating to Records and Invoice Requirements.

Finally, the new rule requires that licensees storing beer or malt beverages in a warehouse must keep a record of the receipt, transfer, and movement of all beer or malt beverages to or from a warehouse in accordance with the invoice and record keeping requirements of subchapter C of the commission's rules, relating to Records and Reports by Licensees and Permittees.

No comments were received.

The new rule is authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Code, and §62.08(e), which requires the commission to promulgate a rule regarding warehouse registration requirements.

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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Shana L. Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3280

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## CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

### 16 TAC §45.105

The Texas Alcoholic Beverage Commission adopts the amendment to 16 TAC §45.105, relating to Advertising, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5839). The rule will not be republished.

Section 45.105 implements Alcoholic Beverage Code §108.52(c), as amended by Section 347 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019). As amended, subsection (c) requires the commission to adopt reasonable rules relating to the type of outdoor advertising retail licensees and permittees may erect or maintain on the retailer's premises.

The adopted amendments align outdoor advertising privileges for all retailers by applying standards previously applicable to mixed beverage permittees to all retailers. With a limited exception for retailers who hold food and beverage certificates, the amended rule provides that holders of retail-tier licenses and permits may not advertise any price for an alcoholic beverage on any sign or other display located on the retailer's premises in such a manner that the price is visible to persons outside of the premises. Retailers, other than mixed beverage permittees, have been prohibited from posting prices under other provisions of the Alcoholic Beverage Code, so the restriction on posting prices in the proposed amendments does not change the status quo for them.

No comments were received.

The adopted amendments are authorized by Alcoholic Beverage Code §108.52(c), which requires the commission to adopt reasonable rules relating to the type of outdoor advertising retail licensees and permittees may erect or maintain on the retailer's premises, and §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Shana L. Horton
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# TITLE 19. EDUCATION

# PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

## CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

## SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

### 19 TAC §§227.1, 227.5, 227.10

The State Board for Educator Certification (SBEC) adopts the amendments to §§227.1, 227.5, and 227.10, concerning admission to educator preparation programs (EPPs). The amendments to §227.1 and §227.5 are adopted without changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4436) and will not be republished. The amendment to §227.10 is adopted with a change to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4436) and will be republished. The adopted amendments implement the statutory requirements of Senate Bill (SB) 1839 and House Bills (HBs) 2039 and 3349, 85th Texas Legislature, Regular Session, 2017. The adopted amendments add clarification for select definitions, add language for admission requirements for the Early Childhood-Grade 3 (EC-3) and Trade and Industrial Workforce Training: Grades 6-12 certificates, and clarify the implementation date in Subchapter A. The amendments implement subject-matter-only assessments to be used for the Pre-Admission Content Test (PACT) in lieu of the current examination that tests an applicant's knowledge of both content and pedagogy prior to admission to an EPP. The amendments also implement changes based on stakeholder input and Texas Education Agency (TEA) staff recommendations.

REASONED JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 227 are organized as follows: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary Evaluation of Certification Eligibility. These subchapters provide for rules that establish requirements for admission to an EPP and preliminary evaluation of certification eligibility.

The following is a description of the adopted amendments to 19 TAC Chapter 227, Subchapter A.

*§227.1. General Provisions.*

The amendment in §227.1(b) changes the word "should" to "shall" to clarify the responsibility of the program to inform all applicants that they must undergo a criminal history background check prior to employment as an educator and prior to clinical teaching. This change ensures that all applicants are aware of these requirements before moving into a role with students. This change also ensures that applicants are aware of their eligibility to serve in a role with students early in their teacher preparation process.

Technical edits were made to define acronyms.

*§227.5. Definitions.*

The amendment to §227.5(5) deletes the phrase, "also known as a certification field," from the definition of *certification category* and adds language to reference Title 19 TAC Chapter 233, which is where the certificate categories (English Language Arts and Reading; Social Studies, Special Education, and Health) can be found.

The amendment in §227.5(6) adds the phrase, "may contain one or more certification categories," and deletes the phrase, "also known as a certification field," to clarify that a class of certificates may contain one or more categories within a certification area. This change better distinguishes between a class and a category since a category is a subgroup of a class.

The amendment in §227.5(8) and §227.5(9) updates the definition for *content certification examination* and creates a new definition for *content pedagogy examinations* to distinguish that a standardized test or assessment required by statute or the SBEC that governs an individual's certification as an educator is different than the required standardized test or assessment required for EPP admission purposes.

These definitions clarify that EPPs will use content certification examinations for admitting candidates into EPPs and content pedagogy examinations will be used for certificate issuance. These definitions support the overall policy shift from using an examination that tests both pedagogy and subject matter knowledge for the PACT to using a subject-matter-only examination. This shift allows the PACT to better mirror the coursework requirement for which it is a substitute and makes the PACT a more effective admission requirement because candidates should not be expected to understand pedagogy before they have begun their studies at an EPP. It is reasonable to assess only subject-matter knowledge for EPP admission purposes because it is the role of the EPP to teach the candidate pedagogy through coursework and training.

The section was renumbered accordingly for formatting purposes.

*§227.10. Admission Criteria.*

The amendment in §227.10(a)(3)(B)(ii) and §227.10(a)(4)(C) sets admission criteria for applicants to pass an appropriate content certification examination. To meet admission eligibility requirements in an EPP, statute requires a candidate to have a 2.5 GPA and either 12 or 15 hours of subject-specific content area coursework in the area they are seeking certification, or to pass a content certification exam, known as the PACT option, to demonstrate content knowledge prior to preparation in that area. Previously, the exams used to satisfy the second option for admission purposes were the exams candidates take after receiving training in their EPP. The exams do not only cover content knowledge but also assess pedagogy (the "how to teach"), which is not appropriate since the candidates have not had the training or preparation in that area. The adopted rule text replaces these exams with subject-matter only exams to better reflect the statutory requirement of subject-specific coursework in the content area for certification and removes the current requirement of testing a candidate's knowledge of pedagogy for PACT purposes. The designated content-only examinations are set out in new Figure 19 TAC §227.10(a)(4)(C), which lists the appropriate subject-matter content certification examination for each certificate area.

Since published as proposed, the implementation date of January 1, 2020, was adjusted to January 27, 2020, to ensure that all assessments used for PACT purposes will be ready.

At the April 26, 2019 SBEC meeting, the SBEC requested additional information on the impact of the PACT implementation date. The following describes the impact of the implementation date on candidates, EPPs, data collection, and program accountability.

*Impact of the Implementation on Candidates*

The PACT change impacts candidates in alternative certification or post-baccalaureate programs by not requiring them to take a content pedagogy exam prior to admission into an EPP. Every time a candidate takes one of these tests for admission purposes, it counts against the five-time limit, and a test fee

is assessed for each retake. A candidate only takes an additional exam if the EPP requires it or if a candidate did not meet minimum requirements for GPA or semester credit hours in the subject-specific content area for the certification sought. This change only adjusts the timing and support for candidates and does not change the requirement that a candidate passes the content pedagogy assessment before becoming the teacher of record.

The amendment does not impact candidates already admitted to EPPs. The SBEC believes that there will be a positive impact on both candidates and districts as potential teachers will now be given support on their content pedagogy examinations. This should not impact district staffing because it does not add an additional requirement before a candidate can enter the classroom as the teacher of record.

*Impact of the Implementation Date on EPPs*

For preparation purposes, the SBEC believes that the PACT does not require EPPs to provide additional curriculum. As prescribed in SBEC rule, the curricula that EPPs are expected to provide for each specific certification category include: the relevant Texas Essential Knowledge and Skills (TEKS), including the English Language Proficiency Standards (ELPS) and the skills and competencies in the Texas teacher standards in 19 TAC Chapter 149, Commissioner's Rules Concerning Educator Standards, that include the standards of Instructional Planning and Delivery and Content Knowledge and Expertise.

EPPs submit aligned curriculum when requesting to offer a certification category. All EPPs that are approved to offer certification categories have already created and submitted their curricula for staff approval.

The SBEC does anticipate that some EPPs may need to increase the amount of time between EPP admission and recommending candidates for intern certifications to allow for content pedagogy alignment with coursework and training.

*Impact of the Implementation Date on Data Collection*

TEA staff does not believe there would be an impact on the internal processes for data collection with this change. TEA staff already collects and calculates pass rates for certification examinations.

*Impact of the Implementation Date on Program Accountability*

The only impact to EPPs is for SBEC accountability purposes. As required in statute and under SBEC rule, EPPs are currently held accountable for the candidates' pass rates on certification examinations. The examinations are categorized as either PPR (pedagogy and professional responsibilities) or non-PPR (content/content-pedagogy exams). EPPs are only held accountable for examinations after a candidate has been admitted, as opposed to if they choose to require their candidates to take the PACT. The table below indicates where there might be a change to program accountability by type of program and assessment.

Figure: 19 TAC Chapter 227 - Preamble

Traditional programs previously did not have the option of requiring the PACT for admission purposes and, therefore, would not be impacted by the rule change. The PACT change only impacts post-baccalaureate and alternative certification programs (ACP) that currently utilize the PACT route. In those cases, the programs will be held accountable for the content pedagogy test that they previously required for admission purposes. Programs currently utilizing PACT provide candidates support for the PPR test and also for the content pedagogy test when candidates change fields.

The amendments implement policy changes regarding the PACT, which is currently an examination testing both content and pedagogy that a candidate takes prior to admission into either an ACP or post-baccalaureate certification program. Negative consequences of the current PACT route pathway include:

A candidate testing through the PACT route would not have obtained the required training to successfully complete questions that contain content pedagogy (the method and practice of teaching). For example, during the 2017-2018 reporting year, candidates in traditional routes passed the English Language Arts, EC-6 test at an 84% pass rate; candidates in alternative routes passed at an 86% pass rate; and candidates through the PACT route passed at a 67% pass rate. Candidate support provided by EPPs increases the likelihood of success on certification assessments. An increase in the number of candidates that are successful on certification assessments can lead to an increase in the number of qualified teachers.

Every test attempt through the PACT route counts toward a candidate's five-time test attempt limit since it is also the exam that a candidate takes at the end of his or her educator preparation to determine whether he or she is eligible for certification by the SBEC.

Traditional preparation programs did not previously have the option to use PACT, which means they were accountable for candidate scores on *both* the content pedagogy test and the PPR test, whereas some alternative and post-baccalaureate preparation programs were accountable *only* for the PPR test since the content pedagogy test was taken before candidates were admitted into the program.

The amendment to §227.10 addresses those concerns by providing all programs, including traditional preparation programs, with the opportunity to use the PACT, now that it is a subject-matter-only examination, because traditional programs are also accepting students who are being prepared in their chosen content subject outside of the EPP. The requirements in Texas Education Code, §21.0441, provide the basis for the PACT examination as a substitute for a candidate completing hours of college coursework in the subject in which the candidate is seeking initial certification. Converting the PACT into a subject-matter-only examination better mirrors the statutorily required coursework for which it is intended as a substitute and better reflects the skills a candidate should possess prior to entry into an EPP.

Only initial certifications that are subject-matter specific have the option for PACT. For example, special education is a specialized pedagogical skill set that applies to all subject areas, so it does not lend itself to having a subject-matter only test. Additionally, due to the broad but basic content knowledge required in elementary education, the amendment uses a basic skills assessment as the PACT assessment for those seeking elementary certifications. For the purposes of language assessments that draw a low number of test takers (e.g., Portuguese, Hindu, etc.), the use of the current content pedagogy assessments is retained as there was not a cost-effective alternative available.

New Figure §227.10(a)(4)(C) provides the list of PACT assessments for their related certification area. The list includes assessments aligned to the TEKS in the related certification areas. The content certification (subject-matter only) examination is open to all interested candidates; therefore, §227.10(a)(4)(D)

is no longer needed because the scores carry over from one program to another. If a candidate wants to change content, he or she would take a different content exam for purposes of admission into the new EPP. The current testing vendor will provide the proposed assessments, which align with the TEKS. Standard setting committees were conducted in Spring of 2019 to determine the acceptable passing standard for admission purposes.

New §227.10(e) creates new admission requirements for the Trade and Industrial Workforce Training: Grades 6-12 certification to implement the statutory requirements prescribed in HB 3349, 85th Texas Legislature, Regular Session, 2017. This language ensures a pathway is available for industry members to transition into an EPP.

New §227.10(g) adds requirements for currently certified educators to enroll in an Early Childhood: Prekindergarten-Grade 3 preparation program to implement the statutory requirements prescribed in SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017. This amendment ensures that candidates currently certified to teach a grade level between Early Childhood and Grade 3 are required to enroll in an EPP if they would like to pursue the Early Childhood: Prekindergarten-Grade 3 certification. At the July 26, 2019 SBEC meeting, the SBEC adopted a change to add a reference to §228.35(i)(2) to clarify that the Early Childhood-Grade 3 certification is offered for initial and additional certification.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 23, 2019, and ended September 23, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: Commit Partnership commented in support of the PACT changes citing benefit for diverse candidates and the ability to strengthen preparation programs.

Response: The SBEC agrees. The current PACT route for admission has a disproportionate impact on diverse candidates and requiring content-only for admission purposes is fair for all candidates.

Comment: Teachworthy commented that it would like to see first two test attempts pass rates after the PACT changes have been in effect for a few months.

Response: The SBEC disagrees. The comments are outside the scope of this item.

Comment: McLennan Community College commented that the change in PACT would cause a teacher shortage due to increase in fees.

Response: The SBEC disagrees. PACT will remain an option for programs to use for admission purposes for most candidates. The PACT assessment is only required for admission purposes for candidates without the requisite coursework hours or for the less than 10% of an admitting class that has lower than a 2.5 GPA.

Comment: McLennan Community College commented that the change in PACT would not help test-takers pass the content pedagogy assessment in science and mathematics because those examinations are comprised of only 5%-10% of pedagogical questions.

Response: The SBEC disagrees. Candidates are currently not supported by the program when attempting the content pedagogy assessment for PACT purposes. The change would ensure that candidates are supported by their programs when attempting the content pedagogy assessments in the future. Even a difference of 5%-10% is enough to determine whether a candidate passes or fails the examination.

Comment: McLennan Community College commented that the January 1, 2020 implementation date was not enough time to transition.

Response: The SBEC disagrees. This timeline has been discussed in open meetings since August 2018. PACT, in its current state, is currently an option that programs can choose to utilize with candidates. Candidates admitted through the PACT route will need to have passed the subject-matter only assessment starting on the stated implementation date.

The State Board of Education (SBOE) took no action on the review of the amendments to §§227.1, 227.5, and 227.10 at the November 15, 2019 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), (4), and (6), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; specify the requirements for the issuance and renewal of an educator certificate; and provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(g)(2) and (3), which require each educator preparation program (EPP) to provide certain information related to the effect of supply and demand forces on the educator workforce of the state and the performance over time of the EPP; TEC, §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for EPPs, including allowing content certification examinations to substitute for required college classroom credit hours in the subject in which the candidate is seeking initial certification; TEC, §21.0489(c), as added by Senate Bill (SB) 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to adopt requirements that would establish an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.050(a), which requires a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree to possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; TEC, §22.083, which requires a school district, open-enrollment charter school, or shared services arrangement to obtain criminal history record information that re-

lates to a person who is not subject to a national criminal history record information review under this subchapter and who is an employee of the district or school; or a shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present; TEC, §22.0835, which requires a school district, open-enrollment charter school, or shared services arrangement to obtain from the department and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to a person participating in an internship consisting of student teaching to receive a teaching certificate; or a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared services arrangement; Texas Occupations Code (TOC), §53.151, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which sets the definitions of "licensing authority" and "occupational license" to have the meanings assigned to those terms by the TOC, Section 58.001; TOC, §53.152, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which requires EPPs to provide applicants and enrollees certain notice regarding potential ineligibility for a certificate based on convicted offenses; the SBEC rules regarding the certificate eligibility of an individual with a criminal history; and the right of the individual to request a criminal history evaluation letter; and TOC, §53.153, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which requires an EPP to refund tuition, application fees, and examination fees paid by an individual if the EPP failed to provide the required notice under the TOC, §53.152, to an individual who was denied a certificate because the individual was convicted of an offense.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code (TEC), §§21.031; 21.041(b)(1), (4), and (6); 21.044(a), (g)(2), and (g)(3); 21.0441; 21.0489(c), as added by Senate Bill 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.050(a); 22.083; and 22.0835; and Texas Occupations Code (TOC), §§53.151-53.153, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017.

*§227.10. Admission Criteria.*

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.

(1) For an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education (IHE).

(2) For an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited IHE.

(3) For an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

*(i)* 2.5 on all coursework previously attempted by the person at an accredited IHE:

*(I)* at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

*(II)* from which the most recent bachelor's degree or higher from an accredited IHE was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

*(ii)* 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited IHE:

*(I)* at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

*(II)* from which the most recent bachelor's degree or higher from an accredited IHE was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) In accordance with the Texas Education Code, (TEC), §21.0441(b), an exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

*(i)* documentation and certification from the program director that an applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

*(ii)* in accordance with the TEC, §21.0441(a)(2)(B), an applicant must pass an appropriate content certification examination as specified in paragraph (4)(C) of this subsection for each subject in which the applicant seeks certification prior to admission. In accordance with the TEC, §21.0441(b), applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification examination if the applicant is not seeking admission to the same EPP that previously granted test approval for a certification examination in the same certification class.

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited IHE is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® (Graduate Record Examinations) revised General Test. The State Board for Educator Certification will use equivalency scores established by the Educational Testing Service, and the Texas Education Agency (TEA) will publish those equivalency scores annually on the TEA website.

(4) For an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on the appropriate content certification examination as specified in the figure provided in this subparagraph for the calendar year during which the applicant seeks admission. The applicant will not be required to successfully complete a passing score on the appropriate content certification examination until January 27, 2020.

Figure: 19 TAC §227.10(a)(4)(C)

(5) For an applicant who will be seeking an initial certificate in a class other than classroom teacher, the applicant shall meet the minimum requirements for admission described in Chapter 239 of this title (relating to Student Services Certificates); Chapter 241 of this title (relating to Principal Certificate); and Chapter 242 of this title (relating to Superintendent Certificate). If an applicant has not met the minimum certification, degree, and/or experience requirement(s) for issuance of a standard certificate prior to admission, the EPP shall inform the applicant in writing of any deficiency prior to admission.

(6) An applicant must demonstrate basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board (THECB) in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(7) An applicant must demonstrate the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited IHE may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited IHE or an accredited high school in the United States.

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited IHE at which the applicant is enrolled.

(8) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.

(9) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt requirements in addition to and not in conflict with those required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class, unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant for the Trade and Industrial Workforce Training: Grades 6-12 certification who has met the following requirements:

(1) has been issued a high school diploma or a postsecondary credential, certificate, or degree;

(2) has seven years of full-time wage-earning experience within the preceding 10 years in an approved occupation for which instruction is offered;

(3) holds with respect to that occupation a current license, certificate, or registration, as applicable, issued by a nationally recognized accrediting agency based on a recognized test or measurement; and

(4) within the period described by paragraph (2) of this subsection, has not been the subject of a complaint filed with a licensing entity or other agency that regulates the occupation of the person, other than a complaint that was determined baseless or unfounded by that entity or agency.

(f) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries). An EPP at an entity that is accredited by an accrediting organization recognized by the THECB may use its own foreign credential evaluation service to meet the requirement described in §245.10(a)(2) of this title (relating to Application Procedures), if the entity is in good standing with its accrediting organization.

(g) An applicant is eligible to enroll in an EPP for the purpose of completing the course of instruction, defined in §228.35(i)(2) of this title (relating to Preparation Program Coursework and/or Training), that is required for the issuance of an Early Childhood: Prekindergarten-Grade 3 certificate if the individual holds a valid standard, provisional, or one-year certificate specified in §230.31 of this title (relating to Types of Certificates) in one of the following certificate categories:

(1) Bilingual Generalist: Early Childhood-Grade 4;

(2) Bilingual Generalist: Early Childhood-Grade 6;

(3) Core Subjects: Early Childhood-Grade 6;

(4) Early Childhood Education;

(5) Elementary--General;

(6) Elementary--General (Grades 1-6);

(7) Elementary--General (Grades 1-8);

(8) Elementary Early Childhood Education (Prekindergarten-Grade 6);

(9) Elementary Self-Contained (Grades 1-8);

(10) English as a Second Language Generalist: Early Childhood-Grade 4;

(11) English as a Second Language Generalist: Early Childhood-Grade 6;

(12) Generalist: Early Childhood-Grade 4;

(13) Generalist: Early Childhood-Grade 6;

(14) Kindergarten;

(15) Prekindergarten-Grade 5--General;

(16) Prekindergarten-Grade 6--General; or

(17) Teacher of Young Children--General.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2019.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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# CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

## 19 TAC §§229.1 - 229.5, 229.8, 229.9

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §229.1(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the December 13, 2019, issue of the Texas Register.)*

The State Board for Educator Certification (SBEC) adopts amendments to §§229.1 - 229.5, 229.8, and 229.9, concerning the accountability system for educator preparation programs (EPPs). The amendments to §§229.2 - 229.4, 229.8, and 229.9 are adopted without changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4443) and will not be republished. The amendments to §229.1 and §229.5 are adopted with changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4443) and will be republished. The adopted amendments to 19 Texas Administrative Code (TAC) Chapter 229, Accountability System for Educator Preparation Programs, provide for commendations for high-performing EPPs; adopt the accountability manual into rule; adjust the performance standard for the accountability indicator for the pedagogy and professional responsibility (PPR) examinations; clarify performance standards; clarify the determination of EPP, certification class, or category accreditation status; allow for the SBEC to require EPP action plans; and allow for a contested case hearing of a certification class or category. Technical changes also remove outdated provisions, clarify processes, and update language to align with other chapters.

REASONED JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. Chapter 229 establishes the performance standards and procedures for educator preparation program accountability.

The Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.045, also requires the SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC executes those provisions of the TEC and fulfills its mission statement with the rules in 19 TAC Chapter 229, which establish the process for issuing annual accreditation ratings for all EPPs to ensure the highest level of educator preparation.

At the October 2018 SBEC meeting, Texas Education Agency (TEA) staff informed the Board that staff would be working to explore opportunities for adjustments to the comprehensive accountability system to increase consistency and transparency. At the December 2018 SBEC meeting, TEA staff presented several topics and received direction from the Board to inform potential rule changes to Chapter 229. At the April 2019 SBEC meeting, TEA staff presented draft rule text on proposed amendments to 19 TAC Chapter 229.

The adopted amendments to 19 TAC Chapter 229 are described below. In addition to the detailed descriptions below, the amendments also remove outdated provisions related to the 2016-2017 and 2017-2018 academic years (AYs); include technical edits to remove the redundancy of "gender, race, or ethnicity" by streamlining the definition of *demographic group;* provide technical clean-up edits for clarification; and provide re-lettering/numbering to conform with the *Texas Register* style and formatting requirements.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

New Figure: 19 TAC §229.1(c) adopts the 2018-2019 Accountability System for Educator Preparation (ASEP) manual into rule to prescribe the relevant criteria, formulas, calculations, and performance standards relevant to §229.1(d) and §229.4(a).

The adopted amendment to relettered §229.1(d) strikes the word "areas" and provide four categories in which an EPP may receive commendations for success from the SBEC. The amendment allows the SBEC to recognize EPPs that go above and beyond in preparing candidates for educator preparation.

At the December 2018 SBEC meeting, the SBEC directed staff to provide the following categories to identify high-performing EPPs to receive commendations for success:

1. The amendment to §229.1(d)(1) establishes the category of **Rigorous and Robust Preparation.** The amendment allows the SBEC to recognize EPPs that perform above and beyond on the ASEP annual performance standards.

2. The amendment to §229.1(d)(2) establishes the category of **Preparing the Educators Texas Needs.** The amendment allows the SBEC to recognize EPPs that actively recruit educators in shortage areas, of color, and for rural schools.

3. The amendment to §229.1(d)(3) establishes the category of **Preparing Educators for Long-Term Success.** The amendment allows the SBEC to recognize EPPs that demonstrate educators' retention in the profession and teacher growth into other professional roles.

4. The amendment to §229.1(d)(4) establishes the category of **Innovative Educator Preparation.** The amendment allows the

SBEC to recognize EPPs that go above and beyond seeking new pathways in preparing candidates for educator preparation.

*§229.2. Definitions.*

The amendment to §229.2(5) provides a technical edit to replace the word "less" with "fewer" to provide clarification of it being a countable number. The amendments also clarify that the experience referenced in the definition of *beginning teacher* is as a classroom teacher.

The amendment to §229.2(6) provides a technical edit to replace the phrase "an enrollee or" with the word "a" to align with current definitions of candidates participating in an EPP. "Enrollee" is not used for reporting purposes.

The amendment to §229.2(7) deletes the phrase, "also referred to as certification field," from the definition of *certification category* and adds language to reference 19 TAC Chapter 233, which is where the certification categories (i.e., English Language Arts and Reading; Social Studies, Special Education, and Health) can be found in rule.

The amendment to §229.2(8) adds the phrase "may contain one or more certification categories as described in Chapter 233 of this title" and deletes the phrase "also referred to as certification field" to clarify that a class of certificate may contain one or more categories within a certification area. This amendment better distinguishes between a class and a category since a category is a subgroup of a class, as well as align with other SBEC rules where this definition exists.

The amendment to §229.2(10) provides a technical edit to strike the phrase "also referred to as finisher" to align with current definitions of candidates who have completed an EPP. The term "finisher" is not used for reporting purposes.

The amendment to §229.2(11) updates the cross reference to §229.4(c) to properly cite small group exceptions.

The amendment to §229.2(13) clarifies that the demographic groups as to race and ethnicity are African American, Hispanic, White, and Other and strikes the reference to the aggregate reporting categories established by the Higher Education Act. The amendment reflects current practice of disaggregated categories used for accountability and reporting purposes. The amendment also strikes the requirement that the EPP assign each candidate to a demographic group, as that information is already reported when each candidate is formally admitted into a program.

The amendment to §229.2(14) provides a grammatical technical edit to strike the phrase "that must be" to clarify that to be considered an EPP, the entity must be approved by the SBEC.

The amendment to §229.2(15) provides a grammatical technical edit to strike the word "elements" to clarify that data to be reported by EPPs do not have to be defined as "elements" to be relevant data for reporting purposes.

The amendment to §229.2(18) provides a grammatical technical edit to replace the word "the" with the phrase "an individual in his or her" to clarify that a first-year teacher is an individual in the first year of employment.

The amendment to §229.2(25) provides a grammatical technical edit to replace the word "the" with the phrase "an individual in his or her" to clarify that a new teacher is an individual in the first year of employment as a classroom teacher under a standard certificate.

*§229.3. Required Submissions of Information, Surveys, and Other Data.*

The amendment to §229.3(a) provides a grammatical technical edit to replace acronym "TEC" with the phrase "Texas Education Code (TEC)" to provide clarity and consistency.

The amendment to §229.3(f)(1) amends the Figure: 19 TAC §229.3(f)(1) to provide clarification of current practice and calculations of EPP-reported data to TEA and combine Sections A, B, and C into one continuous section with the accountability system data consecutively numbered. The following provides more detail on the amendments to the figure.

Language is amended in the figure to read "Record of all candidate observations, including candidates in a certification class other than classroom teacher" to accurately reflect the data required to support TEC, §21.045, regarding field supervision. EPPs document and track field supervision for all candidates but only report individual observation records to TEA for classroom teacher candidates. During the recent cycle of continuing approval of EPPs, a number of programs lacked documentation of field observations required when preparing candidates in certification classes other than classroom teacher (Superintendent, Principal, Librarian, Counselor, Educational Diagnostician, Reading Specialist, and Master Teacher). The SBEC requires, in 19 TAC Chapter 228, that all candidates receive ongoing support by their EPP through field supervision. The amendment allows data collection to monitor this issue. The amendment also clarifies that individual records of each field observation that occurred in the AY would be required, not the average of the candidates. TEA will conduct necessary calculations based on the submission of records.

The figure is amended to clarify that EPPs will report the record of candidates related to data submission and not the numbers of candidates. TEA will compute the numbers based on the submission of records.

The figure is also amended to clarify that EPPs will report actual numbers and scores, not the averages of those actual numbers. TEA will compute the averages based on the submission of records.

The amendment to §229.3(f)(1) includes further edits to the Figure: 19 TAC §229.3(f)(1) to remove all references not directly related to data submissions required of EPPs. Subsection (f)(1) prescribes that EPPs must provide data as specified in the figure. The amendment provides clarity by only providing the data that is applicable for EPPs to submit to TEA.

*§229.4. Determination of Accreditation Status.*

The amendment in §229.4(a) replaces "with respect to gender, race, and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act)" with the phrase "by demographic group" to provide consistency and alignment with the definition in §229.2(13) regarding the definition of *demographic group.* The amendment also specifies that the formula and calculations used to determine the performance standards for the accountability performance indicators would be provided in the new Figure: 19 TAC §229.1(c). This amendment adopts the 2018-2019 ASEP manual into rule to provide transparency to the field and policymakers in how the performance standards were calculated. The amendment also clarifies that data will be used only if the indicators were included in the accountability system for that academic year. As more indicators

become effective, this will provide transparency on when the indicators will be used for accountability purposes.

The amendment to §229.4(a)(1) strikes outdated provisions related to the 2017-2018 AY.

The new §229.4(a)(1)(B) clarifies that, beginning in the 2020-2021 AY, the pass rate for certification examinations will be based on all examinations approved by the EPP and not those taken before admission to the EPP nor those specific examinations taken for pilot purposes. Current rule provides that the pass rate be based solely on examinations required to obtain initial certification, rather than all examinations approved by the EPP. This allows candidates to change certification area after admission, and, therefore, there is no distinct pathway from which a candidate is admitted, prepared, trained, and recommended for testing and certification. The current structure provides for an accountability gap in that, at any time during preparation, candidates can switch as many times as desired, and EPPs are only responsible for the area of internship and certification. In some instances, candidates keep taking tests until they pass one, which becomes the only test for which programs are accountable. The current provision in §229.4(a)(1) regarding the performance standard being based on individuals admitted after December 26, 2016, would be carried over to new §229.4(a)(1)(B) to provide consistency for EPPs.

At the December 2018 SBEC meeting, the SBEC directed TEA staff to propose rule text to align the ASEP indicator relating to examination pass rates with the preparation model in 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, and with Chapter 228, Requirements for Educator Preparation Programs. The amendment closes the current gap to ensure an aligned content pathway of admission, preparation, and assessment for individuals seeking educator certification and creates more transparency and consistency in the accountability system.

The amendment to §229.4(a)(1)(C) provides for a transition period in the calculation of the pedagogy and professional responsibilities (PPR) examination pass rate for the 2018-2019 and 2019-2020 AYs to be as prescribed in §229.4(a)(1)(A), and for the 2020-2021 AY to be as prescribed in new §229.4(a)(1)(B). The amendment also strikes outdated provisions related to the 2017-2018 AY and establishes the performance standard for the PPR pass rate at 85% beginning with the 2018-2019 AY without annual increase; thus the striking of §229.4(a)(1)(C)(i) and (ii). This sustained performance standard will allow for consistency and stability over time.

The amendment in §229.4(a)(1)(D) provides for a transition period in the calculation of the non-PPR examination pass rate for the 2018-2019 and 2019-2020 AYs to be as prescribed in §229.4(a)(1)(A) and for the 2020-2021 AY to be as prescribed in new §229.4(a)(1)(B). The amendment also strikes outdated provisions related to the 2017-2018 AY and establishes the performance standard for the non-PPR pass rate at 75% beginning with the 2018-2019 AY without annual increase; thus the striking of §229.4(a)(1)(D)(i)-(iv). This sustained performance standard will allow for consistency and stability over time.

The amendment in §229.4(a)(2) establishes the 2018-2019 AY as a report-only year for the principal survey indicator and not be used to determine accreditation status. Therefore, EPPs will not be held accountable for the principal survey indicator for the 2018-2019 AY. The revised principal survey was piloted during the 2017-2018 AY. The amendment also strikes outdated provisions related to the 2017-2018 AY.

The amendment in §229.4(a)(4)(A) and (B) strikes outdated provisions related to the 2017-2018 AY.

The amendment in §229.4(a)(5) establishes the performance standard for the new teacher satisfaction survey at 70%. The amendment also establishes the 2018-2019 AY as a report-only year and not be used to determine accreditation status. Therefore, EPPs will not be held accountable for the new teacher satisfaction survey indicator for the 2018-2019 AY. The new teacher satisfaction survey was piloted during the 2017-2018 AY. The performance standard of 70% aligns with the principal survey performance standard of 70% adopted by the SBEC in December 2018. The amendment also strikes outdated provisions related to the 2017-2018 AY.

New §229.4(b) clarifies that EPPs be assigned an accreditation status based on the indicators in §229.4(a) and in compliance with SBEC rules and the TEC. This provides transparency to the field and policymakers in how the accreditation statuses are assigned.

Renumbered §229.4(b)(1)-(5) is amended to provide clarity that the assignment statuses in §229.4(b)(1)-(5) are aligned with new §229.4(b), regarding accreditation status assignment, to accurately reflect the proper assignment of those statuses.

Renumbered §229.4(b)(3)(A)(i)-(iii) is amended for technical formatting purposes.

Renumbered §229.4(b)(3)(A)(ii) is amended to strike "any" and "any of the" regarding indicators in §229.4(a) to clarify that an EPP shall be assigned a status of Accredited-Warned when failing to meet the standard for any two demographic groups on an indicator in any one year. This clarification will not change how the accreditation statuses have been issued under this provision but clarifies that the demographic groups must be in the same indicator to count for accountability purposes. The amendment to renumbered §229.4(b)(3)(A)(ii) and (iii) also strikes "gender, race, or ethnicity" to provide consistency and alignment with the definition of *demographic group* in §229.2(13).

Renumbered §229.4(b)(3)(B) allows the SBEC to assign a status of Accredited-Warned to an EPP for violation of an SBEC order for continual approval. This will encourage EPPs to comply with SBEC orders and will allow the SBEC to lower an EPP's status from Accredited to Accredited-Warned if a violation occurs. The amendment also provides a grammatical technical edit to replace the phrase "Texas Education Code (TEC)" with the acronym "TEC" with to provide clarity and consistency.

Renumbered §229.4(b)(4)(A)(i)-(iii) is amended for technical formatting purposes.

The amendment in §229.4(b)(4)(A)(ii) strikes "any" and "any of the" regarding indicators in §229.4(a) to clarify that an EPP shall be assigned a status of Accredited-Probation in any three demographic groups on an indicator in any one year. This clarification will not change how the accreditation statuses have been issued under this provision but clarifies that the demographic groups must be in the same indicator to count for accountability purposes. The amendment in §229.4(b)(4)(A)(ii) and (iii) also strikes "gender, race, or ethnicity" to provide consistency and alignment with the definition of *demographic group* in §229.2(13).

Renumbered to §229.4(b)(4)(B) is amended for formatting purposes and allows the SBEC to assign a status of Accredited-Probation to an EPP for violation of an SBEC order for continual approval. This encourages EPPs to comply with SBEC orders and

allows the SBEC to lower an EPP's status from Accredited or Accredited-Warned to Accredited-Probation if a violation occurs.

Renumbered §229.4(b)(5)(A)-(F) is amended for technical formatting purposes.

New §229.4(b)(5)(C) allows the SBEC to assign a status of Not Accredited-Revoked if an EPP fails to pay the SBEC-required ASEP technology fee by the deadline set by TEA as prescribed in §229.9(7). This encourages EPPs to not default on the payment and provides equity to all EPPs in support of timely payment of the ASEP technology fee.

Relettered §229.4(c) is amended for technical formatting purposes.

The amendment in relettered §229.4(c)(1)-(5) strikes the phrase "gender, race, or ethnicity" and replaces it with the phrase "demographic group" to provide consistency and alignment with the definition of *demographic group* in §229.2(13).

The amendment in relettered §229.4(c)(3) and (4) clarifies the aggregation procedure for small groups. For groups with 10 or fewer individuals, the group performance will be combined with the next most recent prior year's group performance for which there was at least one individual to ensure that at least 11 individuals or three years of data would be calculated for accountability purposes. For example, if a program has a small group for the 2016-2017 AY of three individuals, does not have any individuals in the 2017-2018 AY, but has one individual in the 2018-2019 AY, then has three individuals in the 2019-2020 AY, the program will be held accountable for the seven individuals for the 2019-2020 AY.

Figure: 19 TAC Chapter 229 - Preamble

The amendment in relettered §229.4(c)(5) provides that EPPs that do not have any candidate data for all indicators in an academic year will maintain the accreditation status assigned by the SBEC in the previous year. This provides for an accreditation status in the event a program does not have candidate data.

*§229.5. Accreditation Sanctions and Procedures.*

The amendment in new §229.5(b)(4) provides the SBEC the opportunity to require an EPP to develop an action plan to address program deficiencies. Previously all EPPs that failed any performance standard were required to develop an action plan that TEA was required to approve. At the December 2018 SBEC meeting, the SBEC removed this provision and directed TEA staff to maintain the flexibility of the requirement. The amendment allows the SBEC the discretion of requiring an EPP to develop an action plan to address program deficiencies and prescribe the steps the program will take to improve the performance of its candidates.

The amendment in §229.5(c) strikes "all" to clarify that every candidate does not have to pass the performance standard to meet the standard for that indicator. The amendment clarifies that the provisions regarding the sanctioning of an EPP's certification class or category are for candidates pursuing certification in a particular category or class not simply admitted in the program. The amendment also clarifies that this provision only applies to the non-PPR examination indicator because that is the only accountability indicator reported by certification class and category. Since published as proposed, a technical edit was made to §229.5(c) to strike the phrase "pursuing certification" to further clarify the rule and to clearly align with the cross-reference of §229.4(a)(1)(D).

The amendment in §229.5(e) strikes the phrase "gender, race, and ethnic" and replaces it with the term "demographic group" to provide consistency and alignment with the definition of *demographic group* in §229.2(13). The amendment also strikes the provision relating to all indicators in §229.4 to clarify that this provision only applies to the non-PPR examination indicator because that is the only accountability indicator reported by certification class and category. The amendment updates the cross reference to §229.4(g) with §229.4(c) to properly cite small group exceptions.

*§229.8. Contested Cases for Accreditation Revocation.*

The amendment to §229.8(a) clarifies that the provisions in this section related to contested cases do apply to withdrawing approval to offer a specific certification class or category to comply with the statutory requirement in TEC, §21.0451(b), that provides that any action authorized or required to be taken against an EPP may also be taken with regard to a certification class or category authorized to be offered by an EPP. The change will provide that prior to revocation of approval to offer a specific class or category, an EPP will be provided an opportunity for a contested case hearing.

*§229.9. Fees for Educator Preparation Program Approval and Accountability.*

The amendment to §229.9(7) removes outdated provisions in §229.9(7)(A)-(C) related to 2017 and the 2017-2018 AY and clarifies the required SBEC-adopted ASEP technology fee of $35 per admitted candidate.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 23, 2019, and ended September 23, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: One individual commented that teaching certification be changed to more simple requirements, such as a minimum 3.0 grade point average (GPA) and pedagogy training, because certification exams do a disservice in eliminating good teachers, and the teacher workforce will continue to decrease.

Board Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking, which is limited to the accountability system for EPPs. The rules regarding educator certification requirements reside in 19 TAC Chapter 230, Professional Educator Preparation and Certification.

Comment: iTeach requested clarification on the proposed changes in §229.5(c) to understand which exams are included in the calculations under the new language and the relationship to §229.4(a)(1)(D).

Board Response: The changes in §229.5(c) clarify the existing sanction process related to individual classes or categories. To further clarify the rule, the SBEC approved at adoption a technical edit to the section to strike the phrase "pursuing certification" to clearly align with the cross-reference of §229.4(a)(1)(D) noted in the subsection regarding non-PPR examinations.

Comment: Teachworthy suggested that the SBEC should not use information from the results from the 2017-2018 principal survey for accountability purposes, given that the SBEC approved a new survey for use in 2018-2019.

Board Response: The SBEC disagrees. The principal survey used for the 2017-2018 ASEP reporting year was approved by the SBEC, utilized in the field for several years, and went through the SBEC process of being implemented using a pilot year, reporting year, and then for accountability purposes. The survey was not changed between the 2016-2017 reporting year when it was used only for reporting purposes, and the 2017-2018 reporting year, when it was used for accountability purposes. Adoption of a new survey does not nullify the utility of the previous survey.

The State Board of Education (SBOE) took no action on the review of the amendments to §§229.1 - 229.5, 229.8, and 229.9 at the November 15, 2019 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an educator preparation program (EPP), for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and to assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c), as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017; 21.0441(c) and (d); 21.0443; 21.045, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; 21.0451; and 21.0452.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4(a) of this title (relating to Determination of Accreditation Status) are prescribed in the figure provided in this subsection.
Figure: 19 TAC §229.1(c)

(d) An accredited EPP may receive commendations for success in the following four categories identified by the SBEC and prescribed in the figure in subsection (c) of this section:

(1) Rigorous and Robust Preparation;

(2) Preparing the Educators Texas Needs;

(3) Preparing Educators for Long-Term Success; and

(4) Innovative Educator Preparation.

*§229.5. Accreditation Sanctions and Procedures.*

(a) The State Board for Educator Certification (SBEC) may assign an educator preparation program (EPP) Accredited-Warned or Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules and/or Texas Education Code, Chapter 21.

(b) If an EPP has been assigned Accredited-Warned or Accredited-Probation status, or if the SBEC determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC;

(3) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC; and/or

(4) require the EPP to develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates. TEA staff may prescribe the information that must be included in the action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP that SBEC has ordered the action plan.

(c) Notwithstanding the accreditation status of an EPP, if the performance of candidates in an individual certification class or category offered by an EPP fails to meet the performance standard on the non-PPR examinations as described in §229.4(a)(1)(D) of this title (relating to Determination of Accreditation Status) for three consecutive

years, the approval to offer that certification class or category shall be revoked. Any candidates already admitted for preparation in that class or category may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be admitted for preparation in that class or category unless and until the SBEC reinstates approval for the EPP to offer that certification class or category.

(d) For purposes of determining compliance with subsection (c) of this section, candidate performance in individual certification classes or categories in only the 2016-2017 academic year and subsequent academic years will be considered.

(e) Performance indicators by demographic group shall not be counted for purposes of subsection (c) of this section pertaining to performance standards for individual certification classes or categories. If the aggregated number of individuals counted for a certification class or category is 10 or fewer, the performance on the standard shall be cumulated and counted in the same manner as provided in §229.4(c) of this title.

(f) An EPP shall be notified in writing regarding any action proposed to be taken pursuant to this section, or proposed assignment of an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(g) All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2019.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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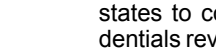
For further information, please call: (512) 475-1497



# CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

**19 TAC §§234.5 - 234.7**

The State Board for Educator Certification (SBEC) adopts amendments to §234.5 and §234.7 and new §234.6, concerning military service members, military spouses, and military veterans. The revisions are adopted without changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4452) and will not be republished. The adopted revisions implement Senate Bill (SB) 1200, 86th Texas Legislature, 2019. The revisions allow military spouses licensed in other states and in good standing to teach in Texas with the credential issued by another state. Additional revisions streamline the credentials review and certificate issuance process for all members of the military community (military service members, military spouses, and military veterans).

REASONED JUSTIFICATION: Chapter 234 consolidates all military-related provisions into one chapter and streamlines future military-related rulemaking opportunities. The Texas Legislature has added statutory provisions regarding teaching credentials for the military community (military service members, military spouses, and military veterans) during the last three legislative sessions:

The 84th Texas Legislature, 2015, waived the certification fees paid by military service members, military spouses, and military veterans; established alternative methods for military groups to meet requirements for licensure; granted the commissioner authority to review applicant credentials and waive requirements for licensure; and incorporated the use of verified military service to satisfy apprenticeship requirements for licensure.

The 85th Texas Legislature, Regular Session, 2017, provided military spouses with a three-year temporary certificate to teach in Texas.

SB 1200, 86th Texas Legislature, 2019, allows military spouses to teach in Texas a maximum of three years with a license in good standing in another state. SB 1200 requires adoption of rules by the SBEC by December 1, 2019.

In addition to the requirements in SB 1200, which provides for increased flexibility for military spouses to teach in Texas, the certification processes have been changed to reduce the amount of time it takes to complete a review of credentials and issue a Texas certificate for military service members, military spouses, and military veterans licensed to teach in other states. Following is a description of the adopted revisions.

*§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.*

The adopted amendment moves a provision in §234.5(e) to new §234.7(d), regarding renewal requirements for military service members, military spouses, and military veterans.

New §234.5(e) establishes the process for military spouses to notify the Texas Education Agency (TEA) of their intent to teach in Texas with a license issued by another state department of education for a maximum of three years. The credentials review process already in place requires individuals certified in other states to complete the online application and request the credentials review, the Texas temporary certificate, and/or the Texas standard certificate. Individuals applying for the credentials review, a required first step for all individuals certified outside of Texas, must also submit copies of all standard certificates issued by departments of education to teach in other states and official transcripts that show degree(s) conferred and date(s). Continued use of this established process supports the timely and successful implementation of this legislation.

The adopted amendment to §234.5(h) references the commissioner's rules concerning examination requirements in 19 Texas Administrative Code (TAC) §152.1001 as an option for clarity and ease of reference that could be utilized by members of the military community that qualify for an exemption from required Texas tests.

*§234.6. Review of Credentials and Issuance of Licensure to Military Service Members, Military Spouses, and Military Veterans.*

New 19 TAC §234.6 implements provisions specific to military spouses in SB 1200, 86th Texas Legislature, 2019, and meets

the legislative mandate for SBEC to adopt rules by December 1, 2019. The new rule allows military spouses licensed in other states, and in good standing, to teach in Texas with credentials issued by another state department of education. SB 1200 specifies that prior to employment, military spouses must notify the licensing agency of their intent to teach in Texas with credentials from another state and must wait for confirmation from the licensing agency that their credentials have been cleared for employment in Texas. The new rule provides for military spouses to have three options to teach in the state of Texas after successful credentials review by TEA: utilization of their current licensure from another state; issuance of the Texas temporary three-year certificate already prescribed in §234.5(d); or issuance of a Texas standard certificate following successful completion of a criminal background check.

New §234.6 establishes provisions for alternative licensing of all members of the military community referenced in the Texas Occupations Code (TOC), §55.004, Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses. TOC, §55.004, provides for the issuance of a license to an applicant who is a military service member, military veteran, and military spouse. The new rule allows for the issuance of the Texas standard certificate upon completion of a successful review of credentials and the required criminal background check. Current provisions in the TOC, §55.004, allow for the SBEC to grant this opportunity to military service members and military veterans, in addition to military spouses.

*§234.7. Renewal and Continuing Education Requirements for Military Service Members, Military Spouses, and Military Veterans.*

New §234.7(d) contains the provision stricken from §234.5(e) regarding renewal requirements for military service members, military spouses, and military veterans, to align all rule text specific to renewal and continuing education requirements in the same section.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 23, 2019, and ended September 23, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: A military spouse with 20 years of experience teaching in other states expressed appreciation for the proposed rule changes that will allow her to teach in Texas for up to three years without having to apply for a new license.

Response: The SBEC agrees. The revisions to 19 TAC Chapter 234 provide military spouses with additional flexibility to teach in Texas up to three years on a standard credential issued by another state department of education. The revisions also implement changes as a result of SB 1200, 86th Texas Legislature, 2019, by December 1, 2019, as specified in legislation.

Comment: A Texas administrator who completed a review of credentials a few years ago inquired about whether the proposed new rule would allow a military spouse to resubmit documents for test exemption consideration and issuance of certification in additional areas when the rule becomes effective.

Response: The SBEC agrees. The revisions to 19 TAC Chapter 234 include clarification about the test exemption process and its applicability to military service members, military spouses, and military veterans. The current process already establishes that test exemption consideration can continue to be utilized by the commenter when the rule becomes effective.

The State Board of Education (SBOE) took no action on the review of amendments to §234.5 and §234.7 and new §234.6 at the November 15, 2019 SBOE meeting.

STATUTORY AUTHORITY. The amendments and new section are adopted under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.052 (b-1), which requires the SBEC to establish procedures to accurately identify military spouses and expedite processing of certification applications that they submit; TEC, §21.052 (c), which specifies the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052 (d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active duty service members; Texas Occupations Code (TOC), §55.001, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004, which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.0041, as added by Senate Bill 1200, 86th Texas Legislature, Regular Session, 2019, which requires state agencies to adopt rules to allow military spouses licensed in other states and in good standing to practice in their occupation of expertise with the license issued in another state; TOC, §55.005, which requires state agencies to establish a process to expedite applications for licensure submitted by members of the military community; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; and TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community.

CROSS REFERENCE TO STATUTE. The amendments and new section implement Texas Education Code, §§21.041(b)(2) and (4); 21.044(a); 21.052(b-1), (c), and (d-1); and Texas Occupations Code, §§55.001, 55.002, 55.003, 55.004, 55.0041, as added by Senate Bill 1200, 86th Texas Legislature, Regular Session, 2019; 55.005, 55.006, 55.007, 55.008, and 55.009.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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## CHAPTER 239. STUDENT SERVICES CERTIFICATES
## SUBCHAPTER E. MASTER TEACHER CERTIFICATE

### 19 TAC §§239.100 - 239.104

The State Board for Educator Certification (SBEC) adopts the repeal of §§239.100 - 239.104, concerning the master teacher certificate. The repeal is adopted without changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4455) and will not be republished. The repeal of 19 Texas Administrative Code (TAC) Chapter 239, Subchapter E, implements the requirements of House Bill (HB) 3, 86th Texas Legislature, 2019. HB 3 requires that effective September 1, 2019, the SBEC can no longer issue or renew master teacher certificates. HB 3 also specifies that master teacher certificates are designated as "legacy" certificates and recognized for assignment purposes until they expire.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 239, Student Services Certificates, Subchapter E, Master Teacher Certificate, establish the minimum requirements for admission, preparation, standards, certificate issuance, and renewal of master teacher certificates in reading, mathematics, technology, and science.

HB 3 repealed Texas Education Code (TEC), §§21.0481 - 21.0484, the statutory authority for the master teacher certificates.

Texas Education Agency staff have proactively reached out to those potentially affected by the repeal of those certificates: (1) educator preparation programs that offer preparation for the master teacher certification to notify them and provide guidance to the programs on what they need to do to close-out these certificate classes and to assist candidates who are currently in the pipeline for the master teacher certificates; and (2) current certificate holders to notify them and provide guidance that the current master teacher certificates is designated as "legacy" and allows holders to be eligible for placement into appropriate teaching assignments.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 23, 2019, and ended September 23, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the October 4, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: Two educators commented in opposition to the proposed repeal of the rules for master teacher certificates and requested that the Board retain the master teacher certification and allow renewals for existing master teacher certificate holders.

Response: The SBEC disagrees. HB 3, 86th Texas Legislature, 2019, requires that effective September 1, 2019, the SBEC no longer issue or renew master teacher certificates. Therefore, the SBEC is required to repeal its rules on master teacher certificates to be in compliance with the legislative mandate.

Comment: The Association of Texas Professional Educators suggested that since HB 3 requires the SBEC to repeal master teacher certificates, the SBEC should adopt new rule language that would allow valid Legacy Master Reading Teacher (MRT) certificate holders to transition to Reading Specialist certificates through the current renewal process. ATPE stated that the assignments for these two certificates are identical and would allow current MRT certificate holders to continue teaching in their assignments without subjecting them to unnecessary burdens to keep those assignments.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking, which is limited to the repeal of master teacher certificates in 19 TAC Chapter 239, Student Services, Subchapter E, Master Teacher Certificate. The rules regarding Reading Specialist certificates are in 19 TAC Chapter 239, Student Services, Subchapter D, Reading Specialist Certificate.

The State Board of Education (SBOE) took no action on the review of the repeal of §§239.100 - 239.104 at the November 15, 2019 SBOE meeting.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §21.064, as amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019, which required the State Board for Educator Certification (SBEC) to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire; and Article 4, Repealer, Section 4.001(a)(2) - (5), which repeals TEC, §21.0481, Master Reading Teacher Certification; TEC, §21.0482, Master Mathematics Teacher Certification; TEC, §21.0483, Master Technology Teacher Certification; and TEC, §21.0484, Master Science Teacher Certification.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §21.064, as amended by House Bill 3, 86th Texas Legislature, Regular Session, 2019; and Article 4, Repealer, Section 4.001(a)(2) - (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.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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# TITLE 22. EXAMINING BOARDS

## PART 5. STATE BOARD OF DENTAL EXAMINERS

### CHAPTER 101. DENTAL LICENSURE

**22 TAC §101.8**

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §101.8, concerning persons with criminal backgrounds. This amendment will implement the changes to the Board's consideration of criminal convictions required by H.B. 1342 of the 86th Legislature, and the automatic application denials and revocations of licenses required by H.B. 1899 of the 86th Legislature. This amendment is adopted without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5859 ). The rule will not be republished.

The Board received no written comments regarding this amendment.

This rule amendment is adopted under Texas Occupations Code §254.001(a)-(b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings and the examination of applicants for a license to practice dentistry. Additionally, the rule is adopted under Texas Occupations Code §262.102(a), which gives the Board authority to adopt rules relating to professional conduct for dental hygienists, and Texas Occupations Code §265.0015 which permits the Board to adopt rules that establish the requirements for dental assistant registration.

This rule implements H.B. 1342 and H.B. 1899 of the 86th Legislature.

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 November 25, 2019.

TRD-201904489
Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: December 15, 2019
Proposal publication date: October 11, 2019
For further information, please call: (512) 305-9380

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### CHAPTER 104. CONTINUING EDUCATION

**22 TAC §104.1**

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §104.1, concerning continuing education requirements. This amendment is adopted without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5863). The rule will not be republished.

This amendment will implement the requirements for safe and effective pain management education required by H.B. 2454 of the 86th Legislature and implementing the requirements of Section 257.005(b-1) of the Occupations Code. Per Section 4 of H.B. 2454, the requirements of additional continuing education do not apply to renewal applications submitted before January 1, 2021. Additionally, this amendment permits continuing education courses taken pursuant to 22 TAC §111.1 to satisfy record-keeping continuing education requirements; the Board is proposing an amendment to 22 TAC §111.1 simultaneously with this amendment.

One comment was received after publication of the proposed rule amendment during the official comment period. On October 28, 2019, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule amendment were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §257.005(b-1) (effective Sept. 1, 2019), which directs the Board to require a licensed dentist whose practice includes direct patient care to complete not less than two hours of board-approved continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances.

This rule implements the requirements of H.B. 2454 of the 86th Legislature and Texas Occupations Code §257.005(b-1).

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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Casey Nichols
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-9380

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### CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

**22 TAC §111.1**

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §111.1, concerning additional continuing education requirements for prescribing controlled substances. This amendment is adopted with no changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5865). The rule will not be republished.

This amendment will implement the requirements for continuing education required by H.B. 2174 of the 86th Legislature and the requirements of Section 481.07635 of the Health and Safety

Code. Per Section 17 of H.B. 2174, the requirements of additional continuing education must be completed by September 1, 2021, for dentists who hold authorization to prescribe controlled substances issued before September 1, 2020.

One comment was received after publication of the proposed rule amendment during the official comment period. On October 28, 2019, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Health and Safety Code §481.07635 (effective Sept. 1, 2019), which directs the Board to require a licensed dentist with the authority to prescribe controlled substances to complete at least two hours of continuing education related to approved procedures of prescribing and monitoring controlled substances.

This rule implements the requirements of H.B. 2174 of the 86th Legislature and Texas Health and Safety Code §481.07635.

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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Casey Nichols
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-9380

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**22 TAC §111.3**

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §111.3, concerning prescription monitoring by dentists. This amendment is adopted without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5866). The rule will not be republished.

This amendment will implement the requirements for accessing the prescription history of patients through the Prescription Monitoring Program (PMP) required by H.B. 3284 of the 86th Legislature and the requirements of §481.0764 and §481.0768 of the Health and Safety Code. Per Section 12 of H.B. 3284, the requirements for querying a patient's PMP history prior to prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol are delayed until March 1, 2020.

One comment was received after publication of the proposed rule amendment during the official comment period. On October 28, 2019, the Texas Dental Association provided a written comment in support of adoption of the rule amendment as proposed. The Board agrees with this comment and no changes to the proposed rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Health and Safety Code §481.0764 and §481.0768 (effective Sept. 1, 2019), which directs the Board to require a licensed dentist to access PMP information with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol, and directs the Board to periodically update the applicable disciplinary guidelines concerning the inappropriate disclosure or use of PMP information.

This rule implements the requirements of H.B. 3284 of the 86th Legislature and Texas Health and Safety Code §§481.0764, 481.0768.

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-201904492
Casey Nichols
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-9380

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# PART 23. TEXAS REAL ESTATE COMMISSION

## CHAPTER 534. GENERAL ADMINISTRATION

**22 TAC §534.2**

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §534.2, Processing Fees for Dishonored Payments, in Chapter 534, General Administration, without changes to the proposal as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4630). The rule will not be republished.

The language adopted for repeal is also adopted to be added to §535.101 and §535.210 related to fees, with modifications, for purposes of simplification.

No comments were received on the proposed repeal as published.

The repeal is adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
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Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3177

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## CHAPTER 535. GENERAL PROVISIONS
## SUBCHAPTER D. THE COMMISSION

### 22 TAC §535.41

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.41, Procedures, in Chapter 535, General Provisions, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4631). The rule will not be republished.

The amendments to §535.41 implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendments clarify the Commission's policy for allowing public comment at regular quarterly meetings.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3177

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## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

### 22 TAC §§535.51, 535.52, 535.57, 535.58

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.52, Fitness Requirements for Individual Applicant, without changes, and §535.51, General Requirements for a Real Estate License, §535.57, Examinations, and new §535.58, License for Military Service Members, Veterans, or Military Spouses, in Chapter 535, General Provisions, with changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4632). Sections 535.51, 535.57 and 535.58 will be republished.

The amendments to §535.51 eliminate the Texas residency requirement for real estate license eligibility pursuant to statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process. The amendments to §535.51 also remove licensing provisions related to military service members, military veterans and military spouses to consolidate special provisions for these individuals into proposed new rule §535.58.

The amendments to §535.52 implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process and change the language in the caption and throughout the rule from "moral character" to "fitness."

In addition, the amendment to §535.57 removes instructors from the list of those who can be disciplined for prohibited conduct during an examination. This change is part of a wider requirement to remove instructor oversight by the Commission pursuant to statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

Finally, new rule §535.58 was added to provide clarity to licensing requirements related to military service members, military veterans and military spouses ("military members") by consolidating into a separate rule focused specifically on military members. Accordingly, the amendments address the expedited process for applicants who are military members, waives certain application and examination fees, allow the executive director to waive other requirements, accept alternative methods of demonstrating a military member's competency. New §535.58 also establishes limited reciprocity pursuant to statutory changes enacted by the 86th Legislature in SB 1200, which authorizes a spouse of an active member of the military to practice in Texas without a Texas license if they are currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements in Texas.

Eight comments were received on the amendments as published. Four comments were received regarding §535.51 relating to the elimination of the residency requirement. One commenter asked how the removal of the residency requirement comported with the geographic competency requirement. Another asked for clarification as to how to apply the proposed rule. One commented that lifting the residency requirement created an unfair advantage and another requested that the residency requirement remain. Additionally, one comment was received regarding §535.52 and another regarding §535.57 relating to the change of the term "moral character" to "fitness." Lastly, the Commission received a comment in support of the changes to the provisions relating to the military and one request for clarifying language. The Commission declined to make changes because doing so would go against the statutory mandates of the 86th Texas Legislature.

The amendments and new rule are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

*§535.51. General Requirements for a Real Estate License.*

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) through the online process approved by the Commission; or

(B) on the form prescribed by the Commission for that purpose; and

(C) submit the required fee under §535.101 of this title (relating to Fees).

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for a real estate license, an applicant must:

(A) meet the following requirements at the time of the application:

*(i)* be 18 years of age;

*(ii)* be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act; and

(C) meet the honesty, trustworthiness, and integrity requirements under the Act.

(2) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(c) Termination of application. An application is terminated and is subject to no further evaluation or processing if:

(1) the applicant fails to satisfy a current, education, experience, or examination requirement within one year from the date the application is filed;

(2) the applicant fails to submit a required fee within twenty (20) days after the Commission makes written request for payment;

(3) the applicant fails to provide information or documentation requested by the Commission within one year from the date the application is filed; or

(4) the applicant fails to provide fingerprints to the Department of Public Safety within one year from the date the application is filed.

(d) Completion of applicable education and experience.

(1) An applicant is not eligible to take a qualifying examination for a license until the Commission has received evidence of completion of all education and experience required by this subchapter.

(2) The Commission will not grant credit to an applicant for completing a course with substantially the same content as a course for which the applicant received credit within the previous two-year period.

(3) Except as provided by this subchapter and the Act, the Commission will not accept a person's license in another state to meet experience requirements.

(e) Examination. An applicant must take and pass a written examination in accordance with §535.57 of this title.

*§535.57. Examinations.*

(a) Administration of licensing examinations.

(1) An examination required for any license issued by the Commission will be conducted by the testing service with which the Commission has contracted for the administration of examinations.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Commission and the testing service.

(B) The examination fee must be paid each time the examination is taken.

(2) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange an accommodation. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(3) To be authorized for admittance to an examination, the applicant must present to the testing service administering the examinations appropriate documentation required by the testing service under contract with the Commission. The testing service shall require official photo-bearing personal identification of individuals appearing for an examination and shall deny entrance to anyone who cannot provide adequate identification. The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials, dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(4) An applicant is permitted to use hand-held calculators. If a calculator has printout capability, the testing service must approve use of such calculator before the examination. No other electronic devices are permitted.

(b) Conduct during examination.

(1) The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any applicant, license holder, or education provider accredited by the Commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the Commission:

(A) obtaining or attempting to obtain specific questions or answers from an applicant, a Commission employee or any person hired by or associated with the testing service;

(B) removing or attempting to remove questions or answers from an examination site; or

(C) providing or attempting to provide examination questions or answers to another person.

(2) The Commission, or the testing service under contract with the Commission, may file theft charges against any person who removes or attempts to remove an examination or any portion thereof or any written material furnished with the examination whether by actual physical removal or by transcription.

(c) Passing Scores. A broker applicant must attain a passing score of at least 75% in each portion of the broker licensing examination. A sales agent applicant must attain a passing score of at least 70% in each portion of the sales agent licensing examination.

(d) Waiver of examination requirement for licensure.

(1) The Commission shall waive the examination requirement for an applicant for a broker license who has been licensed as a

broker in this state within two years before the filing of the application. The Commission shall waive the examination requirement for an applicant for a sales agent license who has been licensed in this state as a broker or sales agent within two years before the filing of the application.

(2) The Commission may waive the national portion of the examination of an applicant for a broker or sales agent license if the applicant maintains an active license in another state equivalent to the license being applied for, and has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.

(e) Examination results for the national part and state part of the examination are valid for a period of one year from the date each part of the examination is passed.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Commission that the applicant has completed additional mandatory qualifying education listed in §535.64(a) as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 30 hours;

(2) for an applicant who failed the state part of the examination, 30 hours; and

(3) for an applicant who failed both parts of the examination, 60 hours.

*§535.58. License for Military Service Members, Veterans, or Military Spouses.*

(a) Definitions.

(1) "Military service member" means a person who is on 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 Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) Except as otherwise provide by this section:

(1) a person applying for a sales agent or broker license under this chapter must comply with all requirements of §535.51 of this title; and

(2) a person applying for an inspector license under this chapter must comply with all requirements of §535.208 of this title.

(c) Expedited application.

(1) The Commission shall process a license for an applicant who is a military service member, military veteran, or military spouse on an expedited basis.

(2) If the applicant holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas, the Commission shall issue the license as soon as practicable after receipt of the application.

(d) Waiver of fees and requirements.

(1) The Commission shall waive application and examination fees for an applicant who is a:

(A) military service member or veteran whose military service, training, or education substantially meets all of the requirements for a license; or

(B) military service member, 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 same license in this state.

(2) The Executive Director may waive any other requirements for obtaining a license for an applicant who:

(A) meets the requirements of subsection (c)(2) of this section; or

(B) held a license in Texas within the five years preceding the date the applications is filed with the Commission.

(e) Credit for military service.

(1) For an applicant who is a military service member or veteran, the Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(f) Alternate methods of competency. The Commission may accept alternative methods for demonstrating an applicant's competency in the place of passing the specific licensing examination, or completing education and/or experience required to obtain a particular license. Based on the applicant's circumstances and the requirements of a particular license, the Commission may consider any combination of the following as alternative methods of demonstrating competency:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the executive director.

(g) Limited reciprocity for military spouses.

(1) A person who is a military spouse who holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas who wants to practice in Texas in accordance with §55.0041, Occupations Code, must:

(A) notify the Commission of the person's intent to practice in Texas on a form approved by the Commission; and

(B) submit:

*(i)* proof of Texas residency;

*(ii)* a copy of the military identification card issued to the person; and

(2) Upon receipt of the documents required under paragraph (1) of this subsection, the Commission will:

(A) verify that the person is currently licensed and in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

(B) upon confirmation from the other jurisdiction that the person is currently licensed and in good standing with that jurisdiction, issue a license to the person for the same period in which the person is licensed or certified by the other jurisdiction.

(3) A person may not practice in Texas in accordance with this subsection without receiving confirmation from the Commission that the Commission has verified that the person is currently licensed and in good standing with another jurisdiction. Confirmation is provided by the Commission when the person is issued a license as provided for in paragraph (2) of this subsection.

(4) A license issued under this subsection may not be renewed.

(5) After expiration of the initial license, if a person wants to continue to practice in accordance with this subsection, it is the responsibility of the person to seek confirmation from Commission that the person continues to meet the requirements to practice under this subsection by submitting a form approved by the Commission certifying that:

(A) the person is still currently licensed and in good standing with another jurisdiction with substantially equivalent licensing requirements to Texas; and

(B) the person's spouse is still stationed at a military installation in this state.

(6) Upon verification by Commission that the person still meets the requirements under this subsection, the Commission will issue another license for the same period in which the person is currently licensed or certified by the other jurisdiction.

(7) The time period for which a person may practice under this subsection without meeting the requirements for licensure in Texas is limited to the lesser of:

(A) the period during which the person's spouse is stationed at a military installation in this state; or

(B) three years.

(8) A person authorized to practice in this state under this subsection must comply will all other laws and regulations applicable to the license, including any sponsorship requirements.

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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Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
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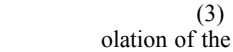

# SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

**22 TAC §§535.60, 535.62, 535.67**

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.60, Definitions; §535.62, Approval of Qualifying Courses; and §535.67, Qualifying Education: Compliance and Enforcement, in Chapter 535, General Provisions, with a non-substantive change to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4635). A non-substantive change was made to §535.67(a)(2) to correct the term "accredited" to "approved" since the Commission only approves providers. Section 535.67 will be republished.

All amendments implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendments to §535.60 change the definition of "Instructor" to conform to statutory changes. The amendments to §535.62 authorize the Commission to deny an application for renewal of a qualifying course approval if a provider is in violation of a Commission order. The amendments to §535.67 eliminate the requirement of providers to use instructors approved by the Commission as required by SB 624.

No comments were received on the amendments as published.

The revisions to the adopted rules do not change the nature or scope so much that they could be deemed different rules. The adopted rules do not affect individuals other than those contemplated by the rule as proposed. The adopted rules do not impose more onerous requirements than the proposed rules.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

*§535.67. Qualifying Education: Compliance and Enforcement.*

(a) Audits.

(1) The Commission staff may:

(A) conduct on-site audits without prior notice to an approved provider; and

(B) enroll and attend a course without identifying themselves as employees of the Commission for purposes of auditing a course.

(2) An audit report indicating noncompliance with the Act or Rules is treated as a written complaint against the approved provider concerned.

(b) Complaints, investigations and hearings.

(1) The Commission shall investigate complaints against approved providers which allege acts constituting violations of the Act, Chapter 1102, Texas Occupations Code and Commission rules.

(2) Complaints must be in writing, and the Commission may not initiate an investigation, or take action against an approved provider or instructor, based on an anonymous complaint.

(3) Commission staff may initiate a complaint for any violation of the Act, Chapter 1102, Texas Occupations Code and Commission rules, including a complaint against an approved provider, if a course completion certificate or other document filed with the Commission provides reasonable cause to believe a violation of this subchapter has occurred.

(4) The Commission shall provide the approved provider named in the complaint a copy of the complaint.

(5) Proceedings against approved providers will be conducted in the manner required by §1101.657 of the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

(c) Cooperation with audit or complaint investigation. An approved provider shall provide records in his or her possession for examination by the Commission or provide such information as is requested by the Commission not later than the 15th day after the date of receiving a request for examination of records or information.

(d) Grounds for disciplinary action against an approved provider.

(1) The following acts committed by an approved provider or qualified instructor acting on behalf of the provider, are grounds for disciplinary action by the Commission against the provider:

(A) procuring or attempting to procure approval for a provider or course by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the Commission;

(B) making a false representation to the Commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(C) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(D) failing to provide, not later than the 15th day after the date of a request, information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(E) making a materially false statement to the Commission in response to a request from the Commission for information relating to a complaint against the approved provider;

(F) disregarding or violating a provision of this Chapter or the Act; or

(G) a provider of qualifying education failing to maintain sufficient financial resources to continue operation of the provider.

(2) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission alleging that a provider or instructor is not adequately teaching to the curriculum standards as required by this Chapter, the Commission may initiate a complaint against that provider.

(3) If after an investigation the Commission determines that a provider or instructor engaged in any of the acts listed in this subsection, or failed to teach to the curriculum standards as required by this Chapter, the Commission may take the following disciplinary action against a provider:

(A) reprimand;

(B) impose an administrative penalty;

(C) require additional education; or

(D) suspend or revoke approval.

(e) Probation. The Commission may probate an order of suspension or revocation issued under this section upon reasonable terms and conditions.

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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Chelsea Buchholtz
General Counsel
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**22 TAC §535.61**

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.61, Approval of Providers of Qualifying Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5360). The rule will not be republished.

The amendments implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendments to §535.61 change "subsequent approval" to "renewal" and authorize the Commission to deny an application for renewal as an approved provider if the provider is in violation of a Commission order.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Chelsea Buchholtz
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Texas Real Estate Commission
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For further information, please call: (512) 936-3177

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## SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

**22 TAC §§535.70 - 535.73**

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.70, Definitions; §535.71, Approval of CE Providers; §535.72, Approval of Non-elective Continuing Education Courses; and §535.73, Approval of Elective Continuing Education Courses in Chapter 535, General Provisions, with changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4637). The rules will be republished.

All amendments implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendment to §535.70 changes the definition of "CE Instructor" to conform to statutory changes. The proposed amendments to §535.71 change "subsequent approval" to "renewal" and authorize the Commission to deny an application for renewal if a continuing education provider is in violation of a Commission order. The amendment to §535.72 eliminates the requirement of continuing education providers to use instructors approved or certified by the Commission as required by SB 624. The amendments to §535.73 reorganize this section and clarify the process for renewing the approval of an elective continuing education course. The amendments to this section authorize the Commission to deny an application for renewal of an elective continuing education course approval if a continuing education provider is in violation of a Commission order.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

*§535.70. Definitions.*

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

(1) Broker Responsibility Course--The course required by §1101.458 of the Act.

(2) CE--Continuing education.

(3) CE instructor--A person chosen by a provider to teach continuing education courses.

(4) CE provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, Texas Occupation Code, or Commission rule; that offers a course for which continuing education credit may be granted by the Commission to a license holder or applicant.

(5) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(6) Distance education delivery--A method of course delivery other than classroom delivery, including online and correspondence delivery.

(7) Combination delivery--A combination of classroom and distance education where at least 50% of the course is offered through classroom delivery.

(8) Elective CE course--A continuing education course, other than a Non-elective CE course, approved by the Commission as acceptable to fulfil the continuing education hours needed to renew a license.

(9) Non-elective CE course--A continuing education course, for which the subject matter of the course is specifically mandated by the Act, Chapter 1102, or Commission rule, that a license holder is required to take prior to renewal of a license.

(10) Legal Update Courses--Required courses created for and approved by the Texas Real Estate Commission to satisfy the eight hours of continuing education required by §1101.455 of the Act.

(11) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(12) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the Commission.

*§535.71. Approval of CE Providers.*

(a) Application for approval.

(1) A person desiring to be approved by the Commission to offer real estate or real estate inspection continuing education courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title; and

(C) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the continuing education provider is required to maintain by this subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission sends the request.

(3) A CE provider is permitted to offer continuing education courses in both real estate and real estate inspector that have been approved by the Commission.

(b) Standards for approval. To be approved by the Commission to offer real estate or real estate inspector continuing education courses, the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If the applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(c) Approval notice. An applicant shall not act as or represent itself to be an approved CE provider until the applicant has received written notice of the approval from the Commission.

(d) Period of initial approval. The initial approval of a CE provider is valid for two years.

(e) Disapproval.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative

Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(f) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(2) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

(3) The Commission may deny an application for renewal if the provider is in violation of a Commission order.

*§535.72. Approval of Non-elective Continuing Education Courses.*

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this subchapter.

(2) Elective continuing education courses are approved and regulated under §535.73 of this subchapter (relating to Approval of Elective Continuing Education Courses).

(b) Application for approval to offer non-elective real estate or inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate or inspector CE course as outlined in this section shall:

(A) for a non-elective real estate course:

*(i)* submit a Real Estate Non-Elective Continuing Education CE Course Application to the Commission; and

*(ii)* pay the fee required by §535.101 of this title (relating to Fees); and

(B) for a non-elective real estate inspection course:

*(i)* submit an Inspector Non-Elective Continuing Education CE Course Application to the Commission; and

*(ii)* pay the fee required by §535.210 of this title (relating to Fees).

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Commission approval of non-elective course materials. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective continuing education courses:

(1) a four-hour Legal Update I: Laws, Rules and Forms course;

(2) a four-hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) a six-hour Broker Responsibility course; and

(4) a four-hour Inspector Legal and Ethics course.

(d) Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Inspector Legal and Ethics course expires on August 31 of each odd-numbered year.

(e) Delivery method. Non-elective CE courses must be delivered by one of the following delivery methods:

(1) classroom delivery;

(2) distance education delivery; or

(3) a combination of (1) and (2) of this subsection if at least 50% of the combined course is offered by classroom delivery.

(f) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this title (relating to Responsibilities and Operations of Providers of Qualifying Courses).

(1) Classroom Delivery. The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers).

(2) Distance Education Delivery.

(A) Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of a method to engage distance education delivery students in interactive discussions and group activities, as well as additional material to meet the course objectives and time requirements are required for approval.

(B) The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter.

(g) Course examinations.

(1) A provider must administer a final examination promulgated by the Commission for non-elective CE courses as follows:

(A) For classroom delivery, the examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

(B) For distance education delivery, the examination will be given after completion of regular course work and must be:

*(i)* proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student who registered for and took the course; or

*(ii)* administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who registered for and took the course;

*(iii)* graded with a pass rate of 70% in order for a student to receive credit for the course; and

*(iv)* kept confidential.

(2) A provider may not give credit to a student who fails a final examination and subsequent final examination as provided for in subsection (h) of this section.

(h) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take one subsequent final examination.

(2) A student shall complete the subsequent final examination no later than the 30th day after the date the original class concludes. The subsequent final examination must be different from the first examination.

(3) A student who fails the subsequent final course examination is required to retake the course and the final course examination.

(i) Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(j) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(k) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

*§535.73. Approval of Elective Continuing Education Courses.*

(a) General requirements.

(1) This subsection applies to continuing education providers seeking to offer an elective CE course approved by the Commission.

(2) Non-elective CE courses are approved and regulated under §535.72 of this subchapter (related to Approval of Non-elective Continuing Education Courses).

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form; and

(B) pay the fee required by §535.101 (related to Fees) and §535.210 of this title (related to Fees).

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for course approval of elective CE course.

(1) To be approved as an elective CE course by the Commission, the course must:

(A) cover subject matter appropriate for a continuing education course for real estate or real estate inspection license holders;

(B) be current and accurate; and

(C) be at least one hour long with daily presentations no more than 10 hours long.

(2) A provider must demonstrate that a course meets the requirements under paragraph (1) of this subsection by submitting a statement describing the objective of the course and the relevance of the subject matter to activities for which a real estate or inspector license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the license holder's development of skill and competence.

(3) The course must be presented in full hourly units.

(4) The course must be delivered by one of the following delivery methods:

(A) classroom delivery;

(B) distance education delivery; or

(C) a combination of (A) and (B), if at least 50% of the combined course is offered by classroom delivery.

(d) Approval notice. A CE provider shall not offer elective continuing education courses until the provider has received written notice of the approval from the Commission.

(e) Renewal of elective CE course approval.

(1) An elective CE course expires two years from the date of approval.

(2) Not earlier than 90 days before the expiration of a course approval, a provider may apply for a renewal of course approval for another two-year period.

(3) Approval of an application to renew an elective CE course approval shall be subject to the standards for initial approval set out in this section.

(4) The Commission may deny an application to renew an elective CE course approval if the provider is in violation of a Commission order.

(f) Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the owner of the rights to the course material granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers).

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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Chelsea Buchholtz
General Counsel
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## SUBCHAPTER I. LICENSE RENEWAL

### 22 TAC §535.91

The Texas Real Estate Commission (TREC or Commission) adopts amendments to 22 TAC §535.91, Renewal of a Real Estate License, in Chapter 535, General Provisions. The rule is adopted with non-substantive changes to correct grammar and spelling in the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4640). The rule will be republished.

The amendments implement statutory changes enacted by the 86th Legislature in SB 37 and in SB 624 as part of the Sunset Review process.

The amendments remove consideration of a student loan default when deciding whether to grant an occupational license and authorize the Commission to deny a license renewal if the license holder is in violation of the terms of a Commission order. The amendments also correct a grammatical error.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

*§535.91. Renewal of a Real Estate License.*

(a) Renewal application.

(1) A real estate license expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.101 of this title (relating to Fees);

(C) comply with the fingerprinting requirements under the Act; and

(D) except as provided for in subsection (g) of this section, satisfy the continuing education requirements applicable to that license.

(3) The Commission may request additional information be provided to the Commission in connection with a renewal application.

(4) A license holder is required to provide information requested by the Commission not later than the 30th day after the date the commission requests the information. Failure to provide information is grounds for disciplinary action.

(b) Renewal Notice.

(1) The Commission will deliver a license renewal notice to a license holder three months before the expiration of the license holder's current license.

(2) If a license holder intends to renew a license, failure to receive a license renewal notice from the Commission does not relieve a license holder from the requirements of this subsection.

(3) The Commission has no obligation to notify any license holder who has failed to provide the Commission with the person's mailing address and email address or a corporation, limited liability company, or partnership that has failed to designate an officer, manager, or partner who meets the requirements of the Act.

(c) Timely renewal of a license.

(1) A renewal application for an individual broker or sales agent is filed timely if it is received by the Commission, or postmarked, on or before the license expiration date.

(2) A renewal application for a business entity broker is filed timely if the application and all required supporting documentation is received by the Commission, or postmarked, not later than the 10th business day before the license expiration date.

(3) If the license expires on a Saturday, Sunday or any other day on which the Commission is not open for business, a renewal application is considered to be filed timely if the application is received or postmarked no later than the first business day after the expiration date of the license.

(d) Initial renewal of sales agent license. A sales agent applying for the first renewal of a sales agent license must:

(1) submit documentation to the Commission showing successful completion of the additional educational requirements

of §535.55 of this chapter (relating to Education and Sponsorship Requirements for a Sales Agent License) no later than 10 business days before the day the sales agent files the renewal application; and

(2) fulfill the continuing education requirements of §535.92(a)(1) and (a)(2) of this subchapter and §535.92(a)(3) of this subchapter (relating to Continuing Education Requirements), if applicable.

(e) Renewal of license issued to a business entity. The Commission will not renew a license issued to a business entity unless the business entity:

(1) has designated a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner who:

(A) is a licensed broker in active status and good standing with the Commission; and

(B) completes any applicable continuing education required under §535.92;

(2) maintains errors and omissions insurance with a minimum annual limit of $1 million per occurrence if the designated broker owns less than 10 percent of the business entity; and

(3) is currently eligible to transact business in Texas.

(f) Renewal and pending complaints.

(1) The Commission may renew the current license of a license holder that has a complaint pending with the Commission, provided the license holder meets all other applicable requirements of this section.

(2) Upon completion of the investigation of the pending complaint, the Commission may suspend or revoke the license, after notice and hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(g) Renewal with deferred continuing education.

(1) A license holder may renew an active license without completion of required continuing education and may defer completion of any outstanding continuing education requirements for an additional 60 days from the expiration date of the current license if the license holder:

(A) meets all other applicable requirements of this section; and

(B) pays the continuing education deferral fee required by §535.101 of this title at the time the license holder files the renewal application with the Commission.

(2) If after expiration of the 60 day period set out in paragraph (1) of this subsection, the Commission has not been provided with evidence that the license holder has completed all outstanding continuing education requirements, the license holder's license will be placed on inactive status.

(3) To activate an inactive license, the license holder must meet the requirements of Subchapter L of this Chapter.

(4) Credit for continuing education courses for a subsequent licensing period does not accrue until after all deferred continuing education has been completed for the current licensing period.

(h) Denial of Renewal. The Commission may deny an application for renewal of a license if the license holder is in violation of the terms of a Commission order.

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

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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Kristen Worman
Deputy General Counsel
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## SUBCHAPTER J. FEES

### 22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.101, Fees, in Chapter 535, General Provisions, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4641). The rule will not be republished.

The amendments eliminate fees to license holders to implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process and the Sunset Advisory Commission's management directives to limit fund growth and provide straightforward fee setting.

The amendments also add provisions to address the process for follow-up payment after a dishonored payment, which is currently addressed in a rule adopted for repeal, and the ability of the Commission to place a license on inactive status if payment is not received.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
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## SUBCHAPTER K. PLACE OF BUSINESS

### 22 TAC §535.112

The Texas Real Estate Commission (TREC) adopts the repeal of §535.112, Branch Office, in Chapter 535, General Provisions, without changes to the text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4643). The rule will not be republished.

The repeal implements statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The repeal eliminates the branch office license.

No comments were received on the repeal as published.

The repeal is adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Chelsea Buchholtz
General Counsel
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## SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

### 22 TAC §535.142

The Texas Real Estate Commission (TREC or Commission) adopts amendments to 22 TAC §535.142, Consumer Complaint Processing, in Chapter 535, General Provisions, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4643). The rule will not be republished.

The amendments implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendments direct the Commission to dismiss a complaint if the complaint is inappropriate or without merit and to protect the complainant's identity by excluding identifying information from a complaint notice sent to a respondent. The amendments also reorganize this section and group all grounds for dismissal of a complaint in subsection (d).

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Kristen Worman
Deputy General Counsel
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## SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

### 22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes to the proposed text, as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4644). The rule will not be republished.

The amendments implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendments conform the statutory references in this section to those changes.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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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Kristen Worman
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## SUBCHAPTER R. REAL ESTATE INSPECTORS

**22 TAC §535.208, §535.219**

The Texas Real Estate Commission (TREC) adopts amendments to §535.208, Application for a License and §535.219, Schedule of Administrative Penalties, in Subchapter R of Chapter 535, General Provisions, with a non-substantive change to the text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4646). A non-substantive change was made to §535.208(b)(1)(A)(ii), to add missing parentheses to the subclause numbering. Section 535.208 will be republished.

The amendments to §535.208 remove the Texas residency requirement for inspectors to receive a license. They also eliminate provisions relating to applicants who are military service members, military veterans, and military spouses to consolidate those provisions in a new rule adopted by the Commission that addresses the topic for all license holders regulated by the Commission. These amendments are recommended by the Texas Real Estate Inspector Committee.

The amendment to §535.219 changes a statutory reference to the inspector penalty matrix to address statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

No comments were received on the amendments as published.

The revisions to the adopted rules do not change the nature or scope so much that they could be deemed different rules. The adopted rules do not affect individuals other than those contemplated by the rule as proposed. The adopted rules do not impose more onerous requirements than the proposed rules.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

*§535.208. Application for a License.*

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) through the online process approved by the Commission; or

(B) on a form approved by the Commission for that purpose; and

(C) submit the required fee under §535.210 of this title.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for any inspector license, an applicant must:

(A) meet the following requirements at the time of the application:

*(i)* be 18 years of age; and

*(ii)* be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act, Chapter 1102, or the rules of the Commission;

(C) meet the honesty, trustworthiness, and integrity requirements under the Act;

(D) provide proof of financial responsibility as required by of Chapter 1102; and

(E) an applicant for an apprentice inspector license must provide the Commission with the applicant's photograph prior to issuance of a license certificate.

(2) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(c) License for military service members, veterans, or military spouses. Unless otherwise excepted under §535.58 of this title (relating to License for Military Service Members, Veterans, or Military Spouses), an applicant who is a military service member, veteran, or the spouse of a person who is on full-time military service in the armed forces of the United States or serving on active duty as a member of the armed forces of the United States must meet all requirements of this section.

(d) Terminated application. An application will be terminated and subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(e) Denial of application.

(1) An application for a license may be denied if the Commission determines that the applicant has failed to satisfy the Commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §535.34 of this title (relating to Salesperson Employed by an Owner of Land and Structures Erected by the Owner).

(2) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the Commission in an application for a license for an apprentice or a real estate inspector.

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 November 21, 2019.

TRD-201904436
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: December 11, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3177



**22 TAC §535.210**

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.210, Fees, in Chapter 535, General

Provisions, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4651). The rule will not be republished.

The amendments eliminate fees to license holders to implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process and the Sunset Advisory Commission's management directives to limit fund growth and provide straightforward fee setting.

The amendments also add provisions to address the process for follow-up payment after a dishonored payment, which is currently addressed in a rule adopted for repeal, and the ability of the Commission to place a license on inactive status if payment is not received.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 November 21, 2019.

TRD-201904430
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: December 11, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3177

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## SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

### 22 TAC §§535.400, 535.402, 535.403

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.400, Registration of Easement or Right-of-Way Agents; §535.402, Complaints, Disciplinary Action and Appeals; and §535.403, Renewal of Registration, in Chapter 535, General Provisions, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4652). The rule will not be republished.

The amendments to §535.400 implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process and remove the residency requirement for becoming registered as an easement or right-of-way agent.

The amendments to §535.402 change the time frame to respond to a Commission request for information from 10 working days to 14 days to align this section with other Commission rules and provide greater clarity to respondents.

The amendments to §535.403 implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process and authorize the Commission to deny a license renewal if the license holder is in violation of the terms of a Commission order.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 November 21, 2019.

TRD-201904433
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Effective date: December 11, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3093

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## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.47, §537.55

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.47, Standard Contract Form TREC No. 40-9; and §537.55, Standard Contract Form TREC No. 48-1, in Chapter 537, Professional Agreements and Standard Contracts, without changes to the text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4654). The rules will not be republished.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker Lawyer Committee recommends revisions to the contract forms adopted by reference under the amendments to Chapter 537 to address issues that have arisen since the last contract revisions.

The Third Party Financing Addendum adopted by reference in §537.47 is amended to clarify that the three-day notice requirement in 2.B does not apply to Paragraph 4 and the "time is of the essence" language was moved to the body of Paragraph 2 for clarity.

The Addendum for Authorizing Hydrostatic Testing adopted by reference in §537.55 is amended to include a reference to the scope of hydrostatic testing in the top sentence.

Eight commenters submitted comments on the proposed amendments to §537.47, regarding the Third Party Financing Addendum. Most comments were unrelated to the pending amendments. One commenter requested added language to allow a buyer to choose whether their appraisal is ordered during or after the option period. Another requested to add a checkbox for private lending in Paragraph 1 and to require a copy of a written statement in Paragraph 2.A. if the buyer is

not able to satisfy lender requirements due to credit history. Another commenter requested the addendum language change to reflect how lenders have changed verbiage from a percentage-based origination fee to a set fee. One commenter opposed the changes that removes applicability of the 3-day notice of termination requirements in Paragraph 2.B. to Paragraph 4 and another requested additional clarification as to whether a buyer is required to give any notice under Paragraph 4. Another commenter requested additional language be added to Paragraph 2.B. allowing parties to choose when property approval must be obtained. One commenter requested the addendum include a time period where a buyer will order and pay for the appraisal to avoid a closing delay. One comment was submitted to add additional seller and buyer signature lines.

The Broker-Lawyer Committee considered all of the comments at an open meeting in October.

After some discussion, the Committee declined changes in the addenda. They recommend adoption of the amendments to the forms adopted by reference as proposed.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 November 21, 2019.

TRD-201904438
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: March 1, 2020
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3177

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## CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT
## SUBCHAPTER P. COMPLAINTS

### 22 TAC §539.150

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.150, Complaints, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4655). The rule will not be republished.

The amendments to §539.150 align this section with other Commission rules and provide greater clarity to respondents.

The amendments change the time frame to respond to a Commission request for information from 10 working days to 14 days.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

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 November 21, 2019.

TRD-201904422
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Effective date: December 11, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3093

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## CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

### 22 TAC §543.5

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §543.5, Violations, in Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4656). The rule will not be republished.

The amendments to §543.5 align this section with other Commission rules and provide greater clarity to respondents.

The amendments change the time frame to respond to a Commission request for information from 10 working days to 14 days.

No comments were received on the amendments as published.

The amendments are adopted under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare 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 November 21, 2019.

TRD-201904426
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Effective date: December 11, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3093

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### 22 TAC §543.12

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §543.12, Renewal of Registration in Chapter 543, Rules Relating to the Provisions of the Texas Timeshare

Act, without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4656). The rule will not be republished.

The amendments to §543.12 implement statutory changes enacted by the 86th Legislature in SB 624 as part of the Sunset Review process.

The amendments authorize the Commission to deny a license renewal if the license holder is in violation of the terms of a Commission order.

No comments were received on the amendments as published.

The amendments are adopted under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare 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 November 21, 2019.

TRD-201904425
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Effective date: December 11, 2019
Proposal publication date: August 30, 2019
For further information, please call: (512) 936-3093

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## PART 36. COUNCIL ON SEX OFFENDER TREATMENT

### CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

### SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

**22 TAC §810.10**

The Council on Sex Offender Treatment (council) adopts new §810.10, concerning Recognition of Out-of-State License of Military Spouse.

New §810.10 is adopted without changes to the proposed text as published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5755). Therefore, this rule will not be republished.

BACKGROUND AND PURPOSE

The council adopts new §810.10 to implement Senate Bill 1200, 86th Legislature, Regular Session, 2019, which amended Texas Occupations Code, Chapter 55, concerning recognition of an out-of-state license held by a military spouse. The council adopts this rule to administer authorization of certain military spouses to engage in a business or occupation in the State of Texas without having a license issued in Texas. The adopted rule requires the military spouse to be currently licensed and in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state.

COMMENTS

The 30-day comment period ended November 4, 2019. During this period, the board received no comments.

STATUTORY AUTHORITY

The new section is authorized by Texas Occupations Code, §55.0041 and Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties.

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 November 21, 2019.

TRD-201904419
Aaron Pierce, PhD, LPC, LSOTP-S
Chairperson
Council on Sex Offender Treatment
Effective date: December 11, 2019
Proposal publication date: October 4, 2019
For further information, please call: (512) 776-6972

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

### CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

### SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

**25 TAC §§200.1 - 200.6**

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 §200.1, concerning Definitions; §200.2, concerning General Reporting Guidelines for Health Care-Associated Infection and Preventable Adverse Event Data; §200.3, concerning How to Report; §200.4, concerning Which Events to Report; §200.5, concerning Data to Report; and §200.6, concerning When to Initiate Reporting. The amendments to §§200.1 - 200.6 are adopted without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4946), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Senate Bill 384, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 98, Reporting of Health Care-Associated Infections and Preventable Adverse Events. The new law alters the list of health care-associated infections (HAIs) that health care facilities must report to DSHS by removing the language outlining the specific medical procedures required for HAI reporting by facility type, and replacing it with a requirement for all health care facilities to report the list of HAIs that the Cen-

ters for Medicare and Medicaid Services (CMS) require facilities participating in the Medicare program to report. These changes have the effect of aligning state reporting requirements with federal CMS reporting requirements. Health care facilities will now have one set of HAI data elements to report, instead of having to report one set of data elements mandated by Texas and another mandated by CMS. This alignment will significantly ease reporting requirements.

COMMENTS

The 31-day comment period ended October 14, 2019. During this period, DSHS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, Chapter 98, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary; and 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 system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2019.

TRD-201904521
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: January 1, 2020
Proposal publication date: September 13, 2019
For further information, please call: (512) 776-7676

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# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

## Texas Commission on Environmental Quality

Rule Transfer

In 2015, the 84th Texas Legislature passed House Bill 942, addressing the storage of certain hazardous materials, including ammonium nitrate, and the regulation of such storage in Texas. As a result, the powers, duties, obligations, and liabilities performed by the Texas Department of State Health Services (DSHS), including storage of certain hazardous chemicals, enforcement of certain reporting requirements, and the imposition of criminal, civil, and administrative penalties, transferred to the Texas Commission on Environmental Quality (TCEQ).

The DSHS rules in Title 25, Part 1, Chapter 295, Occupational Health, Subchapter H, Hazardous Chemical Right-to-Know, that are related to these transferred functions, are being transferred to TCEQ under the provisions of the Texas Agriculture Code, Texas Health and Safety Code, and the Texas Water Code, including provisions amended by Senate Bill 219, 84th Texas Legislature, 2015.

The rules will be transferred in the Texas Administrative Code (TAC) effective January 1, 2020.

The attached conversion chart outlines the transfer of rules from 25 TAC to 30 TAC Chapter 325, Hazardous Substances Inventory.

Figure: 25 TAC Chapter 295

TRD-201904538

## Department of State Health Services

Rule Transfer

In 2015, the 84th Texas Legislature passed House Bill 942, addressing the storage of certain hazardous materials, including ammonium nitrate, and the regulation of such storage in Texas. As a result, the powers, duties, obligations, and liabilities performed by the Texas Department of State Health Services (DSHS), including storage of certain hazardous chemicals, enforcement of certain reporting requirements, and the imposition of criminal, civil, and administrative penalties, transferred to the Texas Commission on Environmental Quality (TCEQ).

The DSHS rules in Title 25, Part 1, Chapter 295, Occupational Health, Subchapter H, Hazardous Chemical Right-to-Know, that are related to these transferred functions, are being transferred to TCEQ under the provisions of the Texas Agriculture Code, Texas Health and Safety Code, and the Texas Water Code, including provisions amended by Senate Bill 219, 84th Texas Legislature, 2015.

The rules will be transferred in the Texas Administrative Code (TAC) effective January 1, 2020.

The attached conversion chart outlines the transfer of rules from 25 TAC to 30 TAC Chapter 325, Hazardous Substances Inventory.

Figure: 25 TAC Chapter 295

TRD-201904539

Figure: 25 TAC Chapter 295

| **Current Rules:**<br>**Title 25. Health Services**<br>**Part 1. Texas Department of State Health Services**<br>**Chapter 295. Occupational Health** | **Move :**<br>**Title 30. Environmental Quality**<br>**Part 1. Texas Commission on Environmental Quality**<br>**Chapter 325. Hazardous Substances Inventory** |
|---|---|
| **Subchapter H. Hazardous Chemical Right-to-Know** | |
| *§295.181. General Provisions and Definitions.* | *§325.1. General Provisions and Definitions.* |
| *§295.182. Responsibilities and Requirements.* | *§325.2. Responsibilities and Requirements.* |
| *§295.183. Compliance and Fees.* | *§325.3. Compliance and Fees.* |

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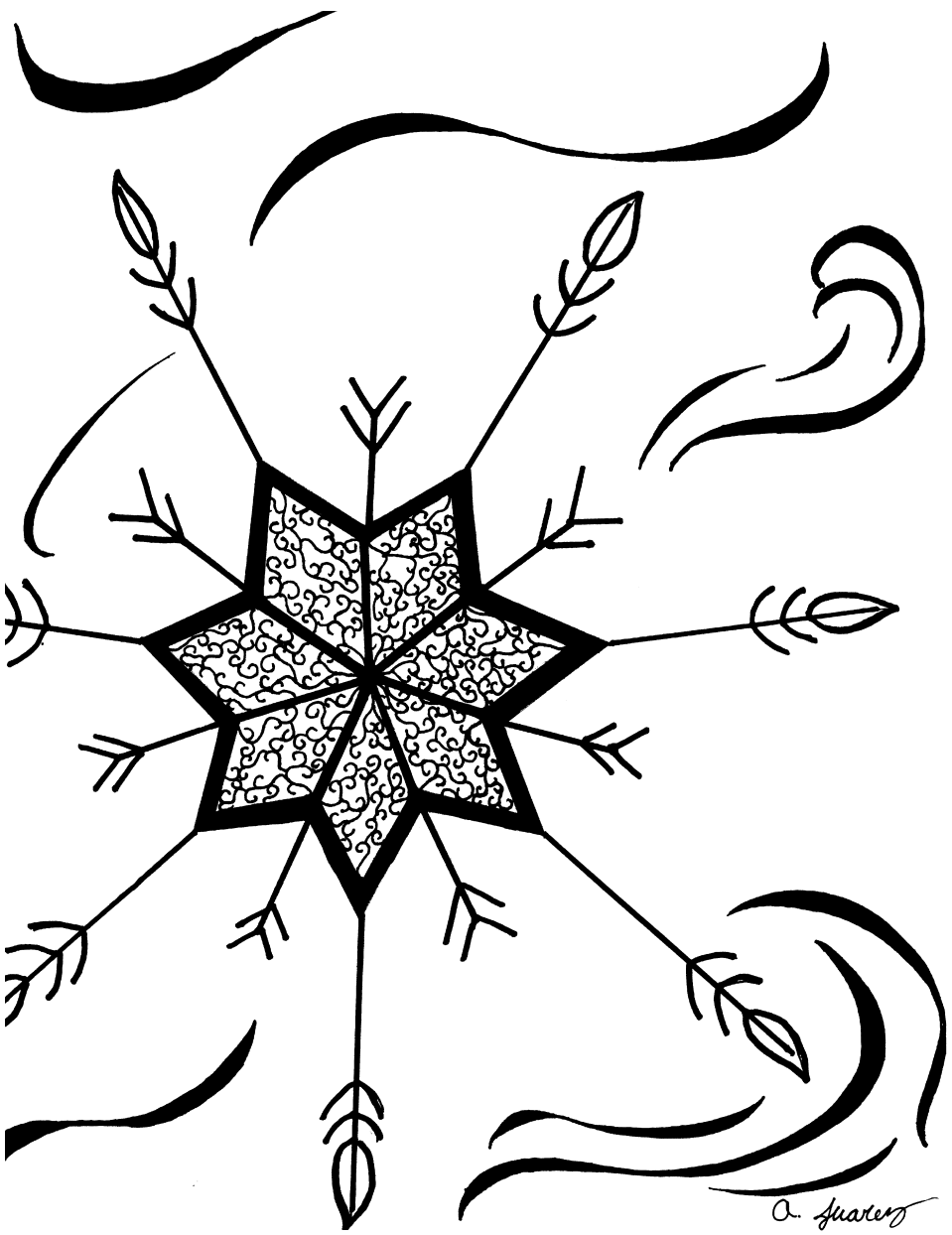

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

**Title 28, Part 2**

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is readopting all sections within Chapters 102 - 116. This readoption complies with Texas Government Code §2001.039, which requires a state agency to review each of its rules every four years and to readopt, readopt with amendment, or repeal the rule. A notice of rule review was published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3653). DWC has determined that the reasons for adopting the chapters continue to exist.

DWC received one comment on the review. The comment, submitted by the Office of Injured Employee Counsel, stated that the reasons for adopting the rules under 28 TAC Chapters 102 - 116 continue to exist and that the rules should be readopted. The comment also recommended that 28 TAC §102.7(6) be amended to use the term "Contested Case Administrative Law Judge" and "Benefit Contested Case Administrative Law Judge" rather than "Contested Case Hearing Officer" and "Benefit Contested Case Hearing Officer." In January 2019, DWC adopted amendments to 28 TAC §102.7 which removed the terms "Contested Case Hearing Officer" and "Benefit Contested Case Hearing Officer." Consequently, the suggested amendments are no longer needed.

Any repeals or suggested amendments identified during the review of these rules may be considered in future rulemaking.

TRD-201904558
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 4, 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 281, Applications Processing, 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 June 21, 2019, issue of the *Texas Register* (44 TexReg 3135).

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 281 Subchapter A, contain the general policy for the processing of applications for permits, licenses, and other types of approvals. The rules are needed to implement provisions of state law, including:

Texas Health and Safety Code (THSC), Chapter 361 regarding new, amended, and renewed industrial solid waste and municipal solid waste permits; the prioritization process for commercial hazardous waste management facility permit applications; applications for new, amended, or renewed radioactive material licenses, including but not limited to those described at THSC, §§401.107, 401.108, 401.110, 401.112 - 401.114, and 401.116; and some provisions of THSC, Chapter 401 at Subchapter F, Special Provisions Concerning Low-Level Radioactive Waste Disposal, and Subchapter G, Special Provisions Concerning By-Product Material;

Texas Local Government Code, §§375.022 - 375.025, regarding the creation of municipal management districts, and Texas Local Government Code, §395.080, regarding impact fees;

Texas Natural Resources Code, §§33.205, 33.2051, 33.2053, and 33.208(a), regarding consistency with the Texas Coastal Management Program (CMP) as it applies to the commission; and

Texas Water Code (TWC), §§11.124 - 11.129, 11.132, and 12.011, regarding water rights; TWC, §16.092, regarding local sponsor designation; TWC, §16.234, regarding levees for reclamation projects; TWC, §§26.027, 26.0271, 26.0272, 26.028, and 26.0281, regarding water quality; TWC, §§27.012 - 27.014 and §27.051(e), regarding underground injection control; TWC, §§32.052, 32.053, 32.055, and 32.101, regarding subsurface area drip dispersal systems; TWC, §§36.304 - 36.306, 49.071, 49.105, 49.153(c), 49.181, 49.231, 49.321 - 49.324, 49.351, and 49.456, regarding other water district applications and petitions such as dissolution of Groundwater Conservation Districts, name changes, appointment of directors, bonds, standby fees, dissolution of districts other than Groundwater Conservation Districts, fire plans, and bankruptcy; TWC, §§36.013, 36.015, 51.027, 51.333, 54.014, 54.030 - 54.033, 55.040, 58.027, 58.030, 59.003, 65.014, and 66.014, regarding creations, conversions, and addition of powers of Groundwater Conservation Districts (TWC, Chapter 36), Water Control and Improvement Districts (TWC, Chapter 51), Municipal Utility Districts (TWC, Chapter 54), Water Improvement Districts (TWC, Chapter 55), Irrigation Districts (TWC, Chapter 58), Regional Districts (TWC, Chapter 59), Special Utility Districts (TWC, Chapter 65), and Stormwater Control Districts (Chapter 66).

The rules in Chapter 281, Subchapter B, identify agency actions which are subject to review for consistency with the goals and policies of the CMP under the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, and the rules of the Coastal Coordination Council in 31 TAC Chapters 501 and 505.

The review also resulted in the commission determining that §281.30, Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications; §281.31, Definitions; and §281.32, Prioritization Process, are obsolete. These sections provided the framework for determining if a permit application for a commercial hazardous waste management facility shall be designated as expedited and described the information which will be prepared by the executive director for consideration by the commissioners in evaluating a permit application for a commercial hazardous waste management facility. The statutory authority for these sections, THSC §361.0871(c), was repealed during the 78th Texas Legislature in 2003.

Public Comment

The public comment period closed on July 23, 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 281 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Repeal of obsolete 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-201904477
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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The Texas Commission on Environmental Quality (commission or TCEQ) has completed its Rule Review of 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, 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 June 21, 2019, issue of the *Texas Register* (44 TexReg 3135).

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 288 are required because they provide requirements for water conservation plans and drought contingency plans, as well as, submittal requirements. The rules are needed to implement several different sections in the Texas Water Code (TWC), including TWC, §§11.1271, 11.1272, 13.146, and 16.402 - 16.404. TWC, §11.1271, requires an applicant for a new or amended water right and certain existing water right holders to develop and submit a water conservation plan. This section identifies specific requirements to be included in water conservation plans and requires the commission to adopt rules establishing criteria and deadlines for submission of water conservation plans. TWC, §11.1272, requires certain regulated entities to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought. This section identifies specific requirements to be included in drought contingency plans and requires the commission to adopt rules requiring wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans. TWC, §13.146, requires the TCEQ to require a retail public utility that provides potable water service to 3,300 or more connections to submit to the Texas Water Development Board (TWDB) a water conservation plan based on specific targets and goals developed by the retail public utility, designate a person as the water conservation coordinator responsible for implementing the water conservation plan, and identify the water conservation coordinator to the TWDB. TWC, §§16.402 - 16.404, require entities required to submit water conservation plans to the TCEQ to submit copies of those plans and an annual report on an entity's progress in implementing the plan to the TWDB and includes authorization for the TCEQ to enforce water conservation plan requirements. These sections also require the TCEQ and the TWDB to develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and for reporting municipal water use data and requires the TCEQ and the TWDB to adopt rules and standards as necessary to implement these sections.

Public Comment

The public comment period closed on July 23, 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 288 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904452
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System, 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 July 5, 2019, issue of the *Texas Register* (44 TexReg 3439).

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 308 incorporate by reference criteria and standards necessary to implement the National Pollutant Discharge Elimination System. Chapter 308 provides criteria and standards for imposing technology-based treatment requirements; issuance of permits to aquaculture projects; determining fundamentally different factors under the federal Clean Water Act (CWA); granting economic variances from best available technology economically achievable under the federal CWA; modifying water quality related variances under the federal CWA; modifying the secondary treatment requirements under the federal CWA; determining alternative effluent limitations under the federal CWA; cooling water intake structures under the federal CWA; imposing conditions for the disposal of sewage sludge under the federal CWA; and ocean discharges.

The review resulted in a determination that the rules in Subchapters C and J are obsolete. Both of these subchapters pertain to extending compliance dates for requirements under the federal CWA. The extension dates have passed.

Public Comment

The public comment period closed on August 5, 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 308 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-201904453
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation, 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 July 5, 2019, issue of the *Texas Register* (44 TexReg 3439).

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 312 are required because the rules provide for regulation of the processing, use, and disposal of sewage sludge, domestic septage, and water treatment sludge, as well as, regulation of the transportation of these and other liquid wastes. Registrations or permits are required to engage in any of these activities. Chapter 312 is divided into Subchapters A - G, which set forth general administrative provisions and fees; provisions for the beneficial use of sewage sludge and/or domestic septage; provisions for land disposal of sewage sludge and domestic septage; criteria for pathogen reduction and odor control for use or disposal of sewage sludge and domestic septage; guidelines for incineration of sewage sludge and domestic septage; provisions for disposal of water treatment sludge or its use as a soil amendment; and provisions for the transportation of sewage sludge, water treatment sludge, domestic septage, grease trap waste, grit trap waste, and chemical toilet waste (collectively termed "liquid wastes").

The rules are needed to implement the provisions of Texas Health and Safety Code, Chapter 361 that govern the use and disposal of sewage sludge, water treatment sludge, and domestic septage and that govern the transportation of liquid wastes. The rules are also needed to protect the quality of the water in the state under Texas Water Code, Chapter 26.

Public Comment

The public comment period closed on August 5, 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 312 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904478
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 TAC Chapter 321, Control of Certain Activities by Rule, 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 June 21, 2019, issue of the *Texas Register* (44 TexReg 3136).

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 321 provide Texas authorization for numerous discharges that are more efficiently authorized by rule than by individual permits.

Subchapter A, Boat Sewage Disposal, contains: authority; definitions; discharge prohibited; the requirements for marine sanitation devices; design specifications and operation requirements for boat pump-out stations; applicability of certifications; obtaining certifications; certification fees; evidence of certifications; delegation to local governmental entities; and criminal penalties.

Subchapter B, Concentrated Animal Feeding Operations (CAFOs), contains: manure, litter, and wastewater discharge and air emissions limitations; definitions; applicability and required authorizations; permit applications; fees; Texas Pollutant Discharge Elimination System general requirements for CAFOs; effluent limitations for CAFO production areas; control facility design requirements applicable to CAFOs; operational requirements applicable to CAFOs; CAFO land application requirements; special requirements for discharges to a playa; requirements applicable to the major sole-source impairment zone; air standard permit for Animal Feeding Operations (AFOs); CAFO notification requirements; CAFO training requirements; CAFO pollution prevention plan, site evaluation, recordkeeping, and reporting; and requirements for AFOs not defined or designated as CAFOs.

Subchapter C, Meat Processing, contains: definitions; application of subchapter; permit alternative; protection of surface water; protection of groundwater; disposal of solid wastes; and prohibition of unauthorized discharge.

Subchapter D, Sand and Gravel Washing, contains: application of subchapter; exception to application of subchapter; treatment and retention facilities; diversion of runoff; available capacity; and prohibition of unauthorized discharge.

Subchapter I, Additional Characteristics and Conditions of General Permits and for Controlling Certain Activities by Rule, contains additional characteristics and conditions for general permits and control of certain activities by rule.

Subchapter N, Handling of Wastes from Commercial Facilities Engaged in Livestock Trailer Cleaning, contains: statement of no discharge policy; definitions; purpose and applicability; certificate of registration and public notice; requirements for containment of waste and pond(s); general requirements; restrictions; enforcement and revocation; and annual waste treatment fees.

Subchapter P, Reclaimed Water Production Facilities, contains: purpose and applicability; definitions; general requirements; restrictions; application requirements; application review; authorization; design requirements; buffer zone requirements; public notice requirements; additional reclaimed water production facility requirements; enforcement; and fees.

The review resulted in a determination that the rules in Subchapters E, F, and L are obsolete. Subchapter E regulates surface coal mining, preparation, and reclamation activities; Subchapter F regulates the shrimp industry; and Subchapter L regulates discharges from motor

vehicles cleaning facilities. These subchapters are obsolete because the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System (NPDES) prohibits TCEQ from issuing authorizations under these subchapters. TCEQ authorizes these discharges under an individual permit which comply with all necessary NPDES requirements.

Public Comment

The public comment period closed on July 23, 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 321 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-201904450
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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## Comptroller of Public Accounts

**Title 34, Part 1**

The Comptroller of Public Accounts adopts the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, concerning Central Administration; Chapter 4, concerning Treasury Administration; Chapter 5, concerning Funds Management (Fiscal Affairs); and Chapter 6, concerning Investment Management. This review is being conducted in accordance with Government Code, §2001.039. The review assessed whether the reasons for adopting the chapters continue to exist.

The comptroller received no comments on the proposed review, which was published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 5154).

Relating to the review of Chapter 1, the comptroller finds that the reasons for adopting Chapter 1 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

Relating to the review of Chapter 4, the comptroller finds that the reasons for adopting Chapter 4 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §4.120 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 5, the comptroller finds that the reasons for adopting Chapter 5 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039. At a later date, §§5.22, 5.36, 5.39, 5.46, 5.47, 5.51, 5.160, 5.200, 5.300, 5.302, and 5.455 will be amended in separate rulemakings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 6, the comptroller finds that the reasons for adopting Chapter 6 continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code, §2001.039.

This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 1, Chapter 4, Chapter 5 and Chapter 6.

TRD-201904487
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: November 25, 2019

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## Texas Workforce Commission

**Title 40, Part 20**

**CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

The Texas Workforce Commission (TWC) adopts the review of Chapter 802, Integrity of the Texas Workforce System, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5407).

No comments were received on the proposed notice of intent.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 802 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 802, Integrity of the Texas Workforce System.

**CHAPTER 809. CHILD CARE SERVICES**

The Texas Workforce Commission (TWC) adopts the review of Chapter 809, Child Care Services, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5407).

No comments were received on the proposed notice of intent.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 809 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 809, Child Care Services.

**CHAPTER 823. INTEGRATED COMPLAINTS, HEARINGS, AND APPEALS**

The Texas Workforce Commission (TWC) adopts the review of Chapter 823, Integrated Complaints, Hearings, and Appeals, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5407).

No comments were received on the proposed notice of intent.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 823 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 823, Integrated Complaints, Hearings, and Appeals.

**CHAPTER 845. TEXAS WORK AND FAMILY CLEARINGHOUSE**

The Texas Workforce Commission (TWC) adopts the review of Chapter 845, Texas Work and Family Clearinghouse, in accordance with Texas Government Code §2001.039. The proposed notice of intent to

review rules was published in the September 20, 2019, issue of the *Texas Register* (44 TexReg 5407).

No comments were received on the proposed notice of intent.

TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 845 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, readopts Chapter 845, Texas Work and Family Clearinghouse.

TRD-201904498
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Filed: November 26, 2019

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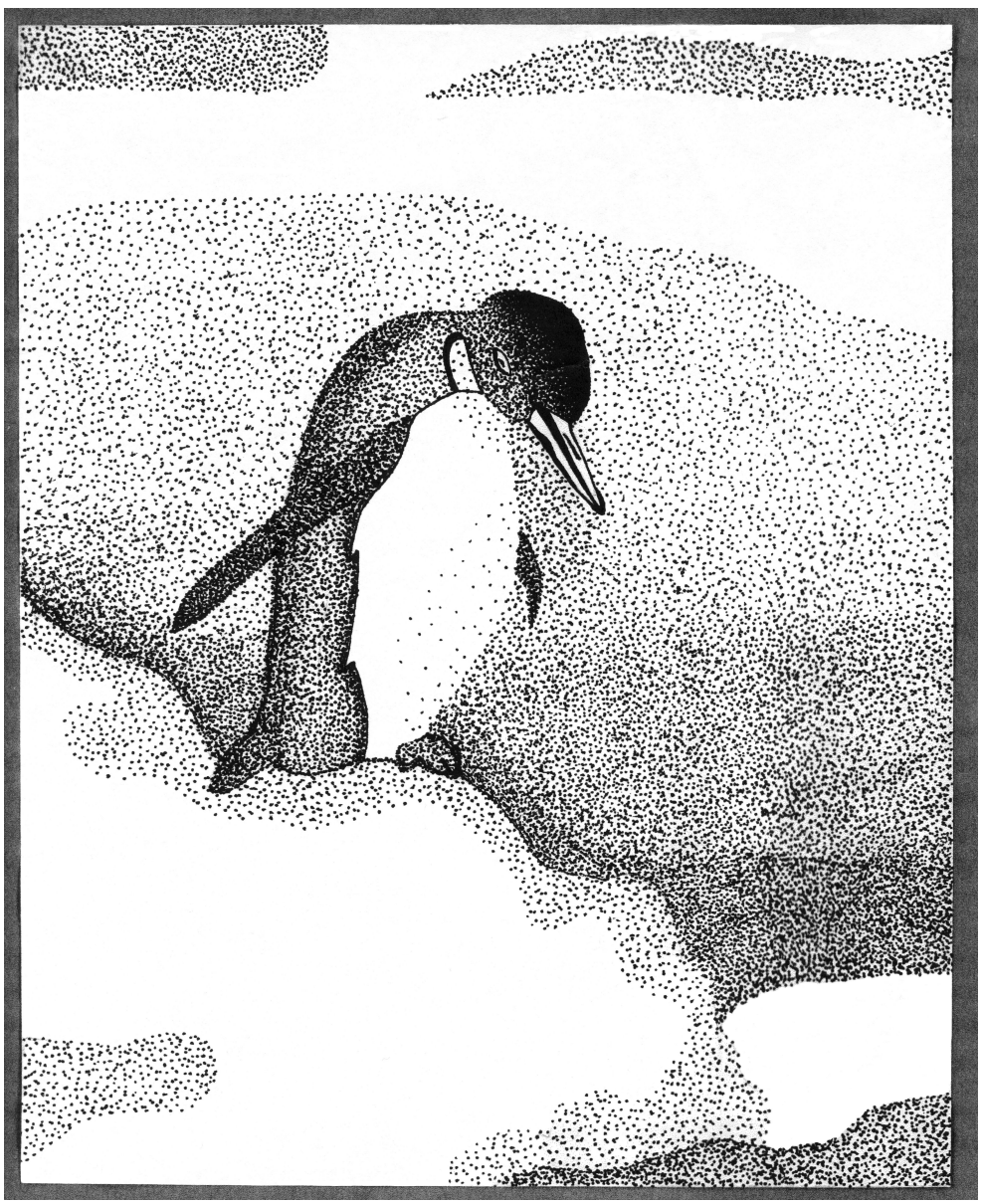

# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC Chapter 227 - Preamble

| **Program Accountability Changes By Program Type and Assessment** | | |
|---|---|---|
| Program Type | Non-PPR | PPR |
| Traditional | None | None |
| Post-Baccalaureate | Yes, if they currently use PACT for admission | None |
| ACP | Yes, if they currently use PACT for admission | None |

Figure: 19 TAC §227.10(a)(4)(C)

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Art** | | | |
| §233.10 | Art: Early Childhood-Grade 12 | 778 TX PACT Art: Early Childhood-Grade 12 | 63 out of 100 selected-response items |
| **Career and Technical Education** | | | |
| §233.13 | Technology Education: Grades 6-12 | 771 TX PACT: Technology Education: Grades 6-12 | 40 out of 80 selected-response items |
| §233.13 | Family and Consumer Sciences, Composite: Grades 6-12 | 721 TX PACT: Family and Consumer Sciences, Composite | 51 out of 100 selected-response items |
| §233.13 | Human Development and Family Studies: Grades 8-12 | 721 TX PACT: Family and Consumer Sciences, Composite | 51 out of 100 selected-response items |
| §233.13 | Hospitality, Nutrition, and Food Sciences: Grades 8-12 | 721 TX PACT: Family and Consumer Sciences, Composite | 51 out of 100 selected-response items |
| §233.13 | Agriculture, Food, and Natural Resources: Grades 6-12 | 772 TX PACT: Agriculture, Food, and Natural Resources: Grades 6-12 | 52 out of 100 selected-response items |
| §233.13 | Business and Finance: Grades 6-12 | 776 TX PACT: Business and Finance: Grades 6-12 | 64 out of 100 selected-response items |
| **Computer Science and Technology Applications** | | | |
| §233.5 | Computer Science: Grades 8-12 | 741 TX PACT Computer Science: Grades 8-12 | 52 out of 80 selected-response items |
| §233.5 | Technology Applications: Early Childhood-Grade 12 | 742 TX PACT Technology Applications: Early Childhood-Grade 12 | 52 out of 80 selected-response items |

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Core Subjects** | | | |
| §233.2 | Core Subjects: Early Childhood-Grade 6 | 701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics) or 790 TX PACT Core Subjects: Grades 4-8 | (701) 25 out of 35 selected-response items<br>(702) 20 out of 30 selected-response items<br>(702) 5 out of 8 score points (1 constructed-response item)<br>(703) 23 out of 36 selected-response items<br>(790) 94 out of 160 selected-response items |
| §233.2 | Core Subjects: Grades 4-8 | 790 TX PACT Core Subjects: Grades 4-8 | 94 out of 160 selected-response items |
| **Dance** | | | |
| §233.10 | Dance: Grades 6-12 | 779 TX PACT Dance: Grades 6-12 | 53 out of 80 selected-response items |
| **English Language Arts and Reading** | | | |
| §233.3 | English Language Arts and Reading: Grades 4-8 | 717 TX PACT English Language Arts and Reading: Grades 4-8 | 71 out of 100 selected-response items |
| §233.3 | English Language Arts and Reading: Grades 7-12 | 731 TX PACT English Language Arts and Reading: Grades 7-12 | 59 out of 100 selected-response items |
| §233.3 | English Language Arts and Reading/Social Studies: Grades 4-8 | 717 TX PACT English Language Arts and Reading: Grades 4-8 and 718 TX PACT Social Studies: Grades 4-8 | (717) 71 out of 100 selected-response items<br>(718) 57 out of 100 selected-response items |
| **Health** | | | |
| §233.11 | Health: Early Childhood-Grade 12 | 757 TX PACT Health: Early Childhood-Grade 12 | 57 out of 80 selected-response items |

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Journalism** | | | |
| §233.3 | Journalism: Grades 7-12 | 756 TX PACT Journalism: Grades 7-12 | 45 out of 72 selected-response items |
| **Languages Other Than English** | | | |
| §233.15 | American Sign Language: Early Childhood-Grade 12 | 784 TX PACT American Sign Language: Early Childhood-Grade 12 (Subtest I) and 785 TX PACT: American Sign Language (ASL): Early Childhood-Grade 12 (Subtest II) | (784) 22 out of 40 selected-response items<br>(785) 23 out of 40 selected-response items<br>(785) 19 out of 32 score points (4 constructed-response items) |
| §233.15 | Arabic: Early Childhood-Grade 12 | ACTFL 605 OPI – Arabic and 600 WPT – Arabic | ACTFL 605 OPI – Arabic: Advanced Low; 600 WPT – Arabic: Advanced Low |
| §233.15 | Chinese: Early Childhood-Grade 12 | 714 TX PACT: LOTE Chinese: Early Childhood-Grade-12 | 58 out of 80 selected-response items<br>11 out of 16 score points (2 constructed-response items) |
| §233.15 | French: Early Childhood-Grade 12 | 710 TX PACT LOTE French: Early Childhood-Grade 12 | 57 out of 80 selected-response items<br>10 out of 16 score points (2 constructed-response items) |
| §233.15 | German: Early Childhood-Grade 12 | 711 TX PACT LOTE German: Early Childhood-Grade 12 | 59 out of 80 selected-response items<br>11 out of 16 score points (2 constructed-response items) |

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Languages Other Than English** (continued) | | | |
| §233.15 | Hindi: Early Childhood-Grade 12 | ACTFL 622 OPI – Hindi and 623 WPT – Hindi | ACTFL 622 OPI – Hindi: Advanced Low; 623 WPT – Hindi: Advanced Low |
| §233.15 | Italian: Early Childhood-Grade 12 | ACTFL 624 OPI – Italian and 625 WPT – Italian | ACTFL 624 OPI – Italian: Advanced Low; 625 WPT – Italian: Advanced Low |
| §233.15 | Japanese: Early Childhood-Grade 12 | ACTFL 607 OPI – Japanese and 602 WPT – Japanese | ACTFL 607 OPI – Japanese: Intermediate High; 602 WPT – Japanese: Intermediate High |
| §233.15 | Korean: Early Childhood-Grade 12 | ACTFL 630 OPI – Korean and 631 WPT – Korean | ACTFL 630 OPI – Korean: Advanced Low; 631 WPT – Korean: Advanced Low |
| §233.15 | Latin: Early Childhood-Grade 12 | 712 TX PACT LOTE Latin: Early Childhood-Grade 12 | 31 out of 50 selected-response items<br>11 out of 16 score points (2 constructed-response items) |
| §233.15 | Portuguese: Early Childhood-Grade 12 | ACTFL 632 OPI – Portuguese and 633 WPT – Portuguese | ACTFL 632 OPI – Portuguese: Advanced Low; 633 WPT – Portuguese: Advanced Low |
| §233.15 | Russian: Early Childhood-Grade 12 | ACTFL 608 OPI – Russian and 603 WPT – Russian | ACTFL 608 OPI – Russian: Intermediate High; 603 WPT – Russian: Intermediate High |

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Languages Other Than English** (continued) | | | |
| §233.15 | Spanish: Early Childhood-Grade 12 | 713 TX PACT LOTE Spanish: Early Childhood-Grade 12 | 55 out of 80 selected-response items<br>12 out of 16 score points (2 constructed-response items) |
| §233.15 | Turkish: Early Childhood-Grade 12 | ACTFL 626 OPI – Turkish and 627 WPT – Turkish | ACTFL 626 OPI – Turkish: Advanced Low; 627 WPT – Turkish: Intermediate High |
| §233.15 | Vietnamese: Early Childhood-Grade 12 | ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese | ACTFL 609 OPI – Vietnamese: Advanced Mid; 604 WPT – Vietnamese: Advanced Low |
| **Mathematics and Science** | | | |
| §233.4 | Mathematics: Grades 4-8 | 715 TX PACT Mathematics: Grades 4-8 | 58 out of 100 selected-response items |
| §233.4 | Science: Grades 4-8 | 716 TX PACT Science: Grades 4-8 | 62 out of 100 selected-response items |
| §233.4 | Mathematics/Science: Grades 4-8 | 715 TX PACT Mathematics: Grades 4-8 and 716 TX PACT Science: Grades 4-8 | (715) 58 out of 100 selected-response items<br>(716) 62 out of 100 selected-response items |
| §233.4 | Mathematics: Grades 7-12 | 735 TX PACT Mathematics: Grades 7-12 | 52 out of 100 selected-response items |
| §233.4 | Science: Grades 7-12 | 736 TX PACT Science: Grades 7-12 | 48 out of 100 selected-response items |
| §233.4 | Life Science: Grades 7-12 | 738 TX PACT Life Science: Grades 7-12 | 63 out of 100 selected-response items |
| §233.4 | Physical Science: Grades 6-12 | 737 TX PACT Physical Science: Grades 6-12 | 61 out of 100 selected-response items |

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Mathematics and Science** (continued) | | | |
| §233.4 | Physics/Mathematics Grades 7-12 | 735 TX PACT: Mathematics: Grades 7-12 and 739 TX PACT: Physics Grades 7-12 | (735) 52 out of 100 selected-response items (739) 52 out of 100 selected-response items |
| §233.4 | Mathematics/Physical Science/Engineering: Grades 6-12 | 735 TX PACT Mathematics: Grades 7-12 and 737 TX PACT Physical Science: Grades 6-12 | (735) 52 out of 100 selected-response items (737) 61 out of 100 selected-response items |
| §233.4 | Chemistry: Grades 7-12 | 740 TX PACT Chemistry: Grades 7-12 | 62 out of 100 selected-response items |
| **Music** | | | |
| §233.10 | Music: Early Childhood-Grade 12 | 777 TX PACT Music: Early Childhood-Grade 12 | 68 out of 100 selected-response items |
| **Physical Education** | | | |
| §233.12 | Physical Education: Early Childhood-Grade 12 | 758 TX PACT Physical Education: Early Childhood-Grade 12 | 52 out of 80 selected-response items |
| **Social Studies** | | | |
| §233.3 | Social Studies: Grades 4-8 | 718 TX PACT Social Studies: Grades 4-8 | 57 out of 100 selected-response items |
| §233.3 | Social Studies: Grades 7-12 | 732 TX PACT Social Studies: Grades 7-12 | 62 out of 100 selected-response items |
| §233.3 | History: Grades 7-12 | 733 TX PACT History: Grades 7-12 | 57 out of 100 selected-response items |
| **Speech Communications** | | | |
| §233.3 | Speech: Grades 7-12 | 729 TX PACT Speech: Grades 7-12 | 40 out of 64 selected-response items 5 out of 8 score points (1 constructed-response item) |

| Certificate TAC Reference | Certificate Name | Pre-Admission Content Test | Passing Standard |
|---|---|---|---|
| **Special Education** | | | |
| §233.8 | Special Education: Early Childhood-Grade 12 | 701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics) | (701) 25 out of 35 selected-response items<br>(702) 20 out of 30 selected-response items<br>(702) 5 out of 8 score points (1 constructed-response item)<br>(703) 23 out of 36 selected-response items |
| §233.8 | Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 | 701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics) | (701) 25 out of 35 selected-response items<br>(702) 20 out of 30 selected-response items<br>(702) 5 out of 8 score points (1 constructed-response item)<br>(703) 23 out of 36 selected-response items |
| **Theatre** | | | |
| §233.10 | Theatre: Early Childhood-Grade 12 | 780 TX PACT Theatre: Early Childhood-Grade 12 | 48 out of 80 selected-response items |

Figure: 19 TAC Chapter 229 - Preamble

| 2016-2017 | 2017-2018 | 2018-2019 | 2019-2020 | **2019-2020 ASEP** |
|---|---|---|---|---|
| 3 | 0 | 1 | 3 | **7** |

# 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.

## Department of Aging and Disability Services

Correction of Error

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services, published a proposal for new 40 TAC §9.181, concerning Administrative Penalties in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7494).

Due to an error by the Texas Register, the figure for 40 TAC §9.181(b) was incorrectly published. The amounts for POTENTIAL FOR ACTUAL HARM, Initial violation, Pattern is $0-$350. The amounts for NO POTENTIAL FOR ACTUAL HARM, Repeated violation, Isolated is $0-$200. The figure will be republished in its entirety.

Figure: 40 TAC §9.181(b)

| **Severity of Violation** | | **Scope of Violation** | | |
|---|---|---|---|---|
| | | Isolated | Pattern | Widespread |
| Immediate threat | Initial violation | $400-1000 | $1000-2000 | $2000-3000 |
| | Repeated violation | $500-1000 | $2000-$4000 | $3000-$5000 |
| | Critical or not critical | CRITICAL | CRITICAL | CRITICAL |
| ACTUAL HARM | Initial violation | $100-$200 | $200-$1000 | $300-$1500 |
| | Repeated violation | $200-$1000 | $300-$2000 | $400-$3000 |
| | Critical or not critical | NOT CRITICAL | CRITICAL | CRITICAL |
| POTENTIAL | Initial violation | $0-$200 | $0-$350 | $0-$500 |

| | | | | |
|---|---|---|---|---|
| FOR ACTUAL HARM | Repeated violation | $0-300 | $0-$500 | $0-$1000 |
| | Critical or not critical | NOT CRITICAL | NOT CRITICAL | CRITICAL |
| NO POTENTIAL FOR ACTUAL HARM | Initial violation | $0-$200 | $0-$350 | $0-$500 |
| | Repeated violation | $0-$200 | $0-$350 | $0-$500 |
| | Critical or not critical | NOT CRITICAL | NOT CRITICAL | NOT CRITICAL |

TRD-201904554

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## Office of the Attorney General

2020 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

**INSTRUCTIONS FOR USE**

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

**LIMITATIONS ON USE**

These charts are intended to assist courts in common situations, and do not account for all deductions and adjustments allowable under the Internal Revenue Code. For instance, these charts do not take into account the qualified business income deduction which might be taken by some owners of sole proprietorships, S corporations, partnerships, or stand-alone rental properties (pass-through entities). In some situations, Section 199A of the Internal Revenue Code allows owners of pass-through entities to take a deduction against their income resulting in a reduction of the effective tax rate. These charts should not be used to estimate the net income of owners of pass-through entities. The computation of net income for parties with complex tax situations may require consultation with an income tax professional.

| EMPLOYED PERSONS<br>2020 TAX CHART | | | | |
|---|---|---|---|---|
| | Federal Insurance Contributions Act Taxes | | | |
| Monthly Gross Wages | Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (6.2%)* | Medicare's Hospital Insurance Program (Medicare) Tax (1.45%)* | Federal Income Tax*** | Net Monthly Income |
| $1,200.00 | $74.40 | $17.40 | $16.67 | $1,091.53 |
| $1,256.67**** | $77.91 | $18.22 | $22.33 | $1,138.21 |
| $1,300.00 | $80.60 | $18.85 | $26.67 | $1,173.88 |
| $1,400.00 | $86.80 | $20.30 | $36.67 | $1,256.23 |
| $1,500.00 | $93.00 | $21.75 | $46.67 | $1,338.58 |
| $1,600.00 | $99.20 | $23.20 | $56.67 | $1,420.93 |
| $1,700.00 | $105.40 | $24.65 | $66.67 | $1,503.28 |
| $1,800.00 | $111.60 | $26.10 | $76.67 | $1,585.63 |
| $1,900.00 | $117.80 | $27.55 | $87.54 | $1,667.11 |
| $2,000.00 | $124.00 | $29.00 | $99.54 | $1,747.46 |
| $2,100.00 | $130.20 | $30.45 | $111.54 | $1,827.81 |
| $2,200.00 | $136.40 | $31.90 | $123.54 | $1,908.16 |
| $2,300.00 | $142.60 | $33.35 | $135.54 | $1,988.51 |
| $2,400.00 | $148.80 | $34.80 | $147.54 | $2,068.86 |
| $2,500.00 | $155.00 | $36.25 | $159.54 | $2,149.21 |
| $2,600.00 | $161.20 | $37.70 | $171.54 | $2,229.56 |
| $2,700.00 | $167.40 | $39.15 | $183.54 | $2,309.91 |
| $2,800.00 | $173.60 | $40.60 | $195.54 | $2,390.26 |
| $2,900.00 | $179.80 | $42.05 | $207.54 | $2,470.61 |
| $3,000.00 | $186.00 | $43.50 | $219.54 | $2,550.96 |
| $3,100.00 | $192.20 | $44.95 | $231.54 | $2,631.31 |
| $3,200.00 | $198.40 | $46.40 | $243.54 | $2,711.66 |
| $3,300.00 | $204.60 | $47.85 | $255.54 | $2,792.01 |
| $3,400.00 | $210.80 | $49.30 | $267.54 | $2,872.36 |
| $3,500.00 | $217.00 | $50.75 | $279.54 | $2,952.71 |
| $3,600.00 | $223.20 | $52.20 | $291.54 | $3,033.06 |
| $3,700.00 | $229.40 | $53.65 | $303.54 | $3,113.41 |
| $3,800.00 | $235.60 | $55.10 | $315.54 | $3,193.76 |
| $3,900.00 | $241.80 | $56.55 | $327.54 | $3,274.11 |
| $4,000.00 | $248.00 | $58.00 | $339.54 | $3,354.46 |
| $4,100.00 | $254.20 | $59.45 | $351.54 | $3,434.81 |
| $4,200.00 | $260.40 | $60.90 | $363.54 | $3,515.16 |
| $4,300.00 | $266.60 | $62.35 | $375.54 | $3,595.51 |
| $4,400.00 | $272.80 | $63.80 | $389.83 | $3,673.57 |
| $4,500.00 | $279.00 | $65.25 | $411.83 | $3,743.92 |
| $4,600.00 | $285.20 | $66.70 | $433.83 | $3,814.27 |
| $4,700.00 | $291.40 | $68.15 | $455.83 | $3,884.62 |
| $4,800.00 | $297.60 | $69.60 | $477.83 | $3,954.97 |
| $4,900.00 | $303.80 | $71.05 | $499.83 | $4,025.32 |
| $5,000.00 | $310.00 | $72.50 | $521.83 | $4,095.67 |
| $5,100.00 | $316.20 | $73.95 | $543.83 | $4,166.02 |
| $5,200.00 | $322.40 | $75.40 | $565.83 | $4,236.37 |
| $5,300.00 | $328.60 | $76.85 | $587.83 | $4,306.72 |
| $5,400.00 | $334.80 | $78.30 | $609.83 | $4,377.07 |
| $5,500.00 | $341.00 | $79.75 | $631.83 | $4,447.42 |
| $5,600.00 | $347.20 | $81.20 | $653.83 | $4,517.77 |
| $5,700.00 | $353.40 | $82.65 | $675.83 | $4,588.12 |
| $5,800.00 | $359.60 | $84.10 | $697.83 | $4,658.47 |
| $5,900.00 | $365.80 | $85.55 | $719.83 | $4,728.82 |
| $6,000.00 | $372.00 | $87.00 | $741.83 | $4,799.17 |
| $6,250.00 | $387.50 | $90.63 | $796.83 | $4,975.04 |
| $6,500.00 | $403.00 | $94.25 | $851.83 | $5,150.92 |
| $6,750.00 | $418.50 | $97.88 | $906.83 | $5,326.79 |
| $7,000.00 | $434.00 | $101.50 | $961.83 | $5,502.67 |
| $7,500.00 | $465.00 | $108.75 | $1,071.83 | $5,854.42 |
| $8,000.00 | $496.00 | $116.00 | $1,181.83 | $6,206.17 |
| $8,500.00 | $527.00 | $123.25 | $1,298.63 | $6,551.12 |
| $9,000.00 | $558.00 | $130.50 | $1,418.63 | $6,892.87 |
| $9,500.00 | $589.00 | $137.75 | $1,538.63 | $7,234.62 |
| $10,000.00 | $620.00 | $145.00 | $1,658.63 | $7,576.37 |
| $10,500.00 | $651.00 | $152.25 | $1,778.63 | $7,918.12 |
| $11,000.00 | $682.00 | $159.50 | $1,898.63 | $8,259.87 |
| $11,475.00** | $711.45 | $166.39 | $2,012.63 | $8,584.53 |
| $11,500.00 | $711.45 | $166.75 | $2,018.63 | $8,603.17 |
| $12,000.00 | $711.45 | $174.00 | $2,138.63 | $8,975.92 |
| $12,300.57***** | $711.45 | $178.36 | $2,210.76 | $9,200.00 |

**Footnotes to Employed Persons 2020 Tax Chart:**

References to "the Code" refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.)

* An employed person not subject to the Social Security Tax and the Medicare Tax will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** In 2020 the maximum level of Monthly Gross Wages for an employed person subject to the 6.2% Social Security tax is $137,700 per year, or $11,475 per month ($137,700 / 12 = $11,475). The maximum Social Security Tax in 2020 is $711.45 based on the maximum OASDI Contribution and Benefit Base amount of $137,700 for 2020.

| | |
|---|---|
| Monthly Gross Wages | $137,700 for the year, or $11,475 monthly average |
| Social Security tax rate = 6.2% | $137,700 is equal to the 2020 OASDI contribution and benefit base, so $137,700 is taxed at this rate.<br><br>$137,700 x .062 = $8,537.40 for the year,<br>or $711.45 monthly average |

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption (in the case of a taxable year beginning after December 31, 2017, and before January 1, 2026 the exemption amount is zero), and taking the standard deduction ($12,400).

Examples:

| | | |
|---|---|---|
| Monthly Gross Wages | $72,000 for the year, or $6,000 monthly average | $132,000 for the year, or $11,000 monthly average |
| Personal Exemption Section 151(d) of the Code | $0 for tax years 2018 through 2025 | $0 for tax years 2018 through 2025 |
| Standard Deduction Section 63(c) of the Code | $12,400 | $12,400 |
| Income amount to be used in the income tax computation | $72,000 - $0 - $12,400 = $59,600 | $132,000 - $0 - $12,400 = $119,600 |
| Income tax computation for 2020 | *If taxable income is over $40,125 but not over $85,525, the tax is $4,617.50 plus 22% of the excess over $40,125*<br>*(Section 1(j) of the Code)*<br><br>$4,617.50 + (($59,600 - $40,125) x .22) = $8,902 for the year, or $741.83 monthly average | *If taxable income is over $85,525 but not over $160,300, the tax is $14,605.50 plus 24% of the excess over $85,525*<br>*(Section 1(j) of the Code)*<br><br>$14,605.50 + (($119,600 - $85,525) x .24) = $22,783.50 for the year, or $1,898.63 monthly average |

**** This amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year.

| | |
|---|---|
| Federal Minimum Wage = $7.25 per hour | $7.25 x 40 hours per week x 52 weeks per year = $15,080 per year |
| Monthly average | $15,080 / 12 = $1,256.67 monthly average |

***** This amount represents the point where the monthly gross wages of an employed individual would result in $9,200.00 of net resources. Texas Family Code section 154.125 provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2019 the adjusted amount determined under Subsection (a-1) is $9,200.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

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**Citations Relating to Employed Persons 2020 Tax Chart:**

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 84 Fed. Reg. 56515 (October 22, 2019)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

   (a) Tax Rate Schedule for 2020 for Single Taxpayers

(1) Revenue Procedure 2019-44, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2019-47, dated November 18, 2019,

(2) Section 1(j) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

(1) Revenue Procedure 2019-44, Section 3.16, which appears in Internal Revenue Bulletin 2019-47, dated November 18, 2019

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.) amended the Internal Revenue Code of 1986, by adding a new paragraph to Section 151(d), which dictates that the personal exemption amount is zero for the taxable years 2018 through 2025.

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code section 154.125" appearing in 44 TexReg 3559 (July 12, 2019)

| SELF-EMPLOYED PERSONS<br>2020 TAX CHART | | | | |
|---|---|---|---|---|
| Monthly Self-Employment Income TFC 154.065* | Old-Age, Survivors and Disability Insurance Program (Social Security) Tax (12.4%)** | Medicare's Hospital Insurance Program (Medicare) Tax (2.9%)** | Federal Income Tax**** | Net Monthly Income |
| $1,200.00 | $137.42 | $32.14 | $8.19 | $1,022.25 |
| $1,300.00 | $148.87 | $34.82 | $17.48 | $1,098.83 |
| $1,400.00 | $160.32 | $37.49 | $26.78 | $1,175.41 |
| $1,500.00 | $171.77 | $40.17 | $36.07 | $1,251.99 |
| $1,600.00 | $183.22 | $42.85 | $45.36 | $1,328.57 |
| $1,700.00 | $194.67 | $45.53 | $54.66 | $1,405.14 |
| $1,800.00 | $206.13 | $48.21 | $63.95 | $1,481.71 |
| $1,900.00 | $217.58 | $50.88 | $73.24 | $1,558.30 |
| $2,000.00 | $229.03 | $53.56 | $82.59 | $1,634.82 |
| $2,100.00 | $240.48 | $56.24 | $93.74 | $1,709.54 |
| $2,200.00 | $251.93 | $58.92 | $104.89 | $1,784.26 |
| $2,300.00 | $263.38 | $61.60 | $116.04 | $1,858.98 |
| $2,400.00 | $274.83 | $64.28 | $127.19 | $1,933.70 |
| $2,500.00 | $286.29 | $66.95 | $138.35 | $2,008.41 |
| $2,600.00 | $297.74 | $69.63 | $149.50 | $2,083.13 |
| $2,700.00 | $309.19 | $72.31 | $160.65 | $2,157.85 |
| $2,800.00 | $320.64 | $74.99 | $171.80 | $2,232.57 |
| $2,900.00 | $332.09 | $77.67 | $182.96 | $2,307.28 |
| $3,000.00 | $343.54 | $80.34 | $194.11 | $2,382.01 |
| $3,100.00 | $354.99 | $83.02 | $205.26 | $2,456.73 |
| $3,200.00 | $366.44 | $85.70 | $216.41 | $2,531.45 |
| $3,300.00 | $377.90 | $88.38 | $227.56 | $2,606.16 |
| $3,400.00 | $389.35 | $91.06 | $238.72 | $2,680.87 |
| $3,500.00 | $400.80 | $93.74 | $249.87 | $2,755.59 |
| $3,600.00 | $412.25 | $96.41 | $261.02 | $2,830.32 |
| $3,700.00 | $423.70 | $99.09 | $272.17 | $2,905.04 |
| $3,800.00 | $435.15 | $101.77 | $283.33 | $2,979.75 |
| $3,900.00 | $446.60 | $104.45 | $294.48 | $3,054.47 |
| $4,000.00 | $458.06 | $107.13 | $305.63 | $3,129.18 |
| $4,100.00 | $469.51 | $109.80 | $316.78 | $3,203.91 |
| $4,200.00 | $480.96 | $112.48 | $327.94 | $3,278.62 |
| $4,300.00 | $492.41 | $115.16 | $339.09 | $3,353.34 |
| $4,400.00 | $503.86 | $117.84 | $350.24 | $3,428.06 |
| $4,500.00 | $515.31 | $120.52 | $361.39 | $3,502.78 |
| $4,600.00 | $526.76 | $123.19 | $372.54 | $3,577.51 |
| $4,700.00 | $538.22 | $125.87 | $383.70 | $3,652.21 |
| $4,800.00 | $549.67 | $128.55 | $403.23 | $3,718.55 |
| $4,900.00 | $561.12 | $131.23 | $423.67 | $3,783.98 |
| $5,000.00 | $572.57 | $133.91 | $444.12 | $3,849.40 |
| $5,100.00 | $584.02 | $136.59 | $464.57 | $3,914.82 |
| $5,200.00 | $595.47 | $139.26 | $485.01 | $3,980.26 |
| $5,300.00 | $606.92 | $141.94 | $505.46 | $4,045.68 |
| $5,400.00 | $618.38 | $144.62 | $525.90 | $4,111.10 |
| $5,500.00 | $629.83 | $147.30 | $546.35 | $4,176.52 |
| $5,600.00 | $641.28 | $149.98 | $566.79 | $4,241.95 |
| $5,700.00 | $652.73 | $152.65 | $587.24 | $4,307.38 |
| $5,800.00 | $664.18 | $155.33 | $607.69 | $4,372.80 |
| $5,900.00 | $675.63 | $158.01 | $628.13 | $4,438.23 |
| $6,000.00 | $687.08 | $160.69 | $648.58 | $4,503.65 |
| $6,250.00 | $715.71 | $167.38 | $699.69 | $4,667.22 |
| $6,500.00 | $744.34 | $174.08 | $750.81 | $4,830.77 |
| $6,750.00 | $772.97 | $180.78 | $801.92 | $4,994.33 |
| $7,000.00 | $801.60 | $187.47 | $853.04 | $5,157.89 |
| $7,500.00 | $858.86 | $200.86 | $955.26 | $5,485.02 |
| $8,000.00 | $916.11 | $214.25 | $1,057.49 | $5,812.15 |
| $8,500.00 | $973.37 | $227.64 | $1,159.72 | $6,139.27 |
| $9,000.00 | $1,030.63 | $241.03 | $1,266.03 | $6,462.31 |
| $9,500.00 | $1,087.88 | $254.42 | $1,377.55 | $6,780.15 |
| $10,000.00 | $1,145.14 | $267.82 | $1,489.07 | $7,097.97 |
| $10,500.00 | $1,202.40 | $281.21 | $1,600.59 | $7,415.80 |
| $11,000.00 | $1,259.65 | $294.60 | $1,712.11 | $7,733.64 |
| $11,500.00 | $1,316.91 | $307.99 | $1,823.64 | $8,051.46 |
| $12,000.00 | $1,374.17 | $321.38 | $1,935.16 | $8,369.29 |
| $12,425.55*** | $1,422.90 | $332.77 | $2,030.08 | $8,639.80 |
| $12,500.00 | $1,422.90 | $334.77 | $2,047.70 | $8,694.63 |
| $13,000.00 | $1,422.90 | $348.16 | $2,166.10 | $9,062.84 |
| $13,186.25***** | $1,422.90 | $353.15 | $2,210.20 | $9,200.00 |

**Footnotes to Self-Employed Persons 2020 Tax Chart:**

References to "the Code" refer to the Internal Revenue Code of 1986, as amended (26 U.S.C.)

* Texas Family Code Section 154.065 defines what is included in, and what may be excluded from, self-employment income for Texas child support guideline computation purposes. The values displayed in the first column of this chart are the full amount of net earnings from self-employment income (determined before the deduction required by Section 1402(a)(12) of the Code explained in the next footnote, **).

** The tax rates for self-employment taxes are 12.4% for the Social Security tax and 2.9% for the Medicare tax, however, only a portion of the net earnings from self-employment are subject to these taxes. Section 1402(a)(12) of the Code permits a self-employed person a deduction in net earnings from self-employment (as defined in sections 1401 and 1402 of the Code) equal to one-half of the combined rates. The purpose is to adjust net income downward by the amount that would have been paid by an employer, had the individual been classified as an employee. The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). Self-employed taxpayers compute this deduction by multiplying net earnings from self-employment by .9235 (100% - 7.65% = 92.35%) to determine the portion of self-employment income subject to self-employment taxes.

Social Security tax is owed on the portion of self-employment income subject to self-employment taxes that do not exceed the maximum OASDI Contribution and Benefit Base amount of $137,700 (for tax year 2020). Medicare's Hospital Insurance Program (Medicare) tax is owed on the full amount of self-employment income subject to self-employment taxes. Section 1401 of the Code.

Examples:

| Monthly Self-Employment Income, TFC 154.065 | $72,000 for the year, or $6,000 monthly average | $156,000 for the year, or $13,000 monthly average |
|---|---|---|
| 92.35% of self-employment income is subject to self-employment taxes | $72,000 x .9235 = $66,492 for the year | $156,000 x .9235 = $144,066 for the year |
| Social Security tax rate = 12.4% | $66,492 does not exceed the OASDI contribution and benefit base, so $66,492 is taxed at this rate.<br><br>$66,492 x .124 = $8,245 for the year, or $687.08 monthly average | $144,066 exceeds the OASDI contribution and benefit base, so only the first $137,700 is taxed at this rate.<br><br>$137,700 x .124 = $17,074.80 for the year, or $1,422.90 monthly average |
| Medicare tax rate = 2.9% | $66,492 x .029 = $1,928.27 for the year, or $160.69 monthly average | $144,066 x .029 = $4,177.91 for the year, or $348.16 monthly average |

*** In 2020 the maximum level of Monthly Self-Employment Income subject to the 12.4% Social Security tax is $149,106.55 per year, or $12,425.55 per month ($149,106.55 / 12 = $14,425.55). This is the income amount before the deduction required by Section 1402(a)(12) of the Code. The maximum Social Security Tax in 2020 is $1,422.90 based on the maximum OASDI Contribution and Benefit Base amount of $137,700 for 2020.

| Monthly Self-Employment Income, TFC 154.065 | $149,106.65 for the year, or $12,425.55 monthly average |
|---|---|
| 92.35% of self-employment income is subject to self-employment taxes | $149,106.65 x .9235 = $137,700 for the year |

| | |
|---|---|
| Social Security tax rate = 12.4% | $137,700 is equal to the 2020 OASDI contribution and benefit base, so $137,700 is taxed at this rate.<br><br>$137,700 x .124 = $17,074.80 for the year, or $1,422.90 monthly average |

**** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption (in the case of a taxable year beginning after December 31, 2017, and before January 1, 2026 the exemption amount is zero), and taking the standard deduction ($12,400).

The calculation of federal income taxes on self-employment income requires the determination of the total self-employment taxes imposed, as described above. The calculation of federal income taxes permits the taxpayer to reduce net income from self-employment by one half of the actual taxes imposed thereby approximating the employment taxes (Social Security and Medicare) that are paid by an employed person. Section 164(f) of the Code.

Examples:

| | | |
|---|---|---|
| Monthly Self-Employment Income, TFC 154.065 | $72,000 for the year, or $6,000 monthly average | $156,000 for the year, or $13,000 monthly average |
| Social security tax | $8,245 for the year, or $687.08 monthly average | $17,074.80 for the year, or $1,422.90 monthly average |
| Medicare tax | $1,928.27 for the year, or $160.69 monthly average | $4,177.91 for the year, or $348.16 monthly average |
| Total self-employment taxes imposed | $8,245 + $1,928.27 = $10,173.27 for the year | $17,074.80 + $4,177.91 = $21,252.71 for the year |
| Tax deductible portion of self-employment taxes. Section 164(f) of the Code | $10,173.27 x 1/2 = $5,086.64 for the year | $21,252.71 x 1/2 = $10,626.36 for the year |
| Personal Exemption Section 151(d) of the Code | $0 for tax years 2018 through 2025 | $0 for tax years 2018 through 2025 |
| Standard Deduction Section 63(c) of the Code | $12,400 | $12,400 |
| Income amount to be used in the income tax computation | $72,000 - $5,086.64 - $0 - $12,400 = $54,513.36 | $156,000 - $10,626.36 - $0 - $12,400 = $132,973.64 |
| Income tax computation for 2020 | *If taxable income is over $40,125 but not over $85,525, the tax is $4,617.50 plus 22% of the excess over $40,125 (Section 1(j) of the Code)*<br><br>$4,617.50 + (($54,513.36 - $40,125) x .22) = $7,782.94 for the year, or $648.58 monthly average | *If taxable income is over $85,525 but not over $163,300 the tax is $14,605.50 plus 24% of the excess over $85,525 (Section 1(j) of the Code)*<br><br>$14,605.50 + (($132,973.64 - $85,525) x .24) = $25,993.17 for the year, or $2166.10 monthly average |

Note: For tax years 2018 through 2025, the personal exemption amount is zero. Section 63(c) of the Code. For 2020, the computations do not include the subtraction of any personal exemptions.

***** This amount represents the point where the monthly gross income of a self-employed individual would result in $9,200.00 of net resources. Texas Family Code section 154.125 provides, "The guidelines for the

support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2019 the adjusted amount determined under Subsection (a-1) is $9,200.00. Texas Family Code section 154.126(a) provides, "If the obligor's net resources exceed the amount provided by Section 154.125(a), the court shall presumptively apply the percentage guidelines to the portion of the obligor's net resources that does not exceed that amount. Without further reference to the percentage recommendation by these guidelines, the court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child." The tax charts promulgated by the Office of the Attorney General include net monthly income amounts up to the amount specified in Texas Family Code section 154.125.

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**Citations Relating to Self-Employed Persons 2020 Tax Chart:**

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 84 Fed. Reg. 56515 (October 22, 2019)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

   (c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2020 for Single Taxpayers

(1) Revenue Procedure 2019-44, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2019-47, dated November 18, 2019,

(2) Section 1(j), of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(j))

(b) Standard Deduction

(1) Revenue Procedure 2019-44, Section 3.16, which appears in Internal Revenue Bulletin 2019-47, dated November 18, 2019

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.) amended the Internal Revenue Code of 1986, by adding a new paragraph to Section 151(d), which dictates that the personal exemption amount is zero for the taxable years 2018 through 2025.

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code section 154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code section 154.125" appearing in 44 TexReg 3559 (July 12, 2019)

TRD-201904534
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: December 3, 2019

♦ ♦ ♦

## Comptroller of Public Accounts

Certification of the Single Local Use Tax Rate for Remote Sellers - 2020

The Comptroller of Public Accounts, administering agency for the collection of the Single Local Use Tax Rate for Remote Sellers, has determined, as required by Tax Code, §151.0595(e), that the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year ending August 2019 is 1.75%. This rate will be in effect for the period of January 1, 2020, to December 31, 2020.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-201904540
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: December 3, 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, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/02/19 - 12/08/19 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 12/02/19 - 12/08/19 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 11/01/19 - 11/30/19 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/19 - 11/30/19 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/19 - 03/31/19 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/19 - 03/31/19 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/19 - 12/31/19 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/19 - 12/31/19 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201904500
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 26, 2019

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### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/09/19 - 12/15/19 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 12/09/19 - 12/15/19 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 12/01/19 - 12/31/19 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/19 - 21/31/19 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.

[3] For variable rate commercial transactions only.

TRD-201904533
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 3, 2019

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### Update to Judgment Rate December 2019

The Office of Consumer Credit Commissioner is updating information that appeared in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7449).

The Consumer Credit Commissioner of Texas has ascertained the following rate ceiling by use of the formulas and methods described in §304.003, Texas Finance Code.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/19 - 12/31/19 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/19 - 12/31/19 is 5.00% for Commercial over $250,000.

TRD-201904461
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 22, 2019

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## Texas Education Agency

### Correction of Error Relating to Adopted Amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1005(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the December 13, 2019, issue of the Texas Register.)*

The Texas Education Agency (TEA) filed adopted amendment to 19 TAC §97.1005 on November 13, 2019, for publication in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7384).

Due to error by the TEA, the 2019 Results Driven Accountability (RDA) Manual included as Figure: 19 TAC §97.1005(b) was filed with non-substantive errors. On page 76 of the 2019 RDA Manual, the Risk Ratio calculation formula should read "racial/ethnic group's disability category" in the numerator and "other students' disability category rate" in the denominator. On page 85 of the 2019 RDA Manual, Special Education (SPED) Indicator #16: SPED Total Disciplinary Removals Rate (Ages 3-21) should specify the overall processing criteria as "No" for RI and "No" for SA, and the years of data available for analysis should be one.

Figure: 19 §TAC 97.1005(b)

TRD-201904529
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 2, 2019

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## State Board for Educator Certification

### Correction of Error

The Texas Education Agency (TEA), on behalf of the State Board for Educator Certification, filed a proposed amendment to 19 TAC §234.5 for publication in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4452). Due to error by the TEA, the cross-reference title for §152.1001 in the amendment to 19 TAC §234.5(h) was filed without a closed parenthesis. The phrase in 19 TAC §234.5(h) should be written as follows: "...(relating to Exceptions to Examination Requirements for Individuals Certified Outside the State)."

TRD-201904560
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 4, 2019

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 17, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 17, 2020.** 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: 7 GEMS ENTERPRISE INC dba Bills 3 Gs Food Mart; DOCKET NUMBER: 2019-0835-PST-E; IDENTIFIER: RN101879716; LOCATION: New Caney, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,892; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Circle 7 Dairy LLC and GRAND CANYON DAIRY LLC; DOCKET NUMBER: 2019-0804-AGR-E; IDENTIFIER: RN100794155; LOCATION: Dublin, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §321.31(a), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TX0130923, Part VI, A., by failing to prevent the discharge of agricultural waste into or adjacent to any water in the state; PENALTY: $3,038; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 580 West Lingleville Road, Suite D, Stephenville, Texas 76401-2209, (817) 588-5800.

(3) COMPANY: City of Gladewater; DOCKET NUMBER: 2019-1177-PWS-E; IDENTIFIER: RN101176832; LOCATION: Gladewater, Gregg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the

facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the June 1, 2018 - November 30, 2018, monitoring period; 30 TAC §290.117(f)(3)(A), by failing 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), 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; PENALTY: $636; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Huntington; DOCKET NUMBER: 2019-0927-MLM-E; IDENTIFIER: RN101184638; LOCATION: Huntington, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's Well Number 2; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent that is covered with 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 §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage which is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(B), by failing to properly house the gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency; 30 TAC §290.43(c)(3), by failing to ensure all overflows are not subject to submergence; 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallons per minute per connection; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to operate the production, treatment, and distribution facilities at the public water system at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(D)(i) and (ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(s)(1), by failing to calibrate the facility's three well meters at least once every three years; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $5,464; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: City of Rio Vista; DOCKET NUMBER: 2019-0839-MWD-E; IDENTIFIER: RN101919876; LOCATION: Rio Vista, Johnson 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 WQ0013546002, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $44,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $44,625; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Deerhaven Water Control and Improvement District; DOCKET NUMBER: 2019-0779-PWS-E; IDENTIFIER: RN105777015; LOCATION: Horseshoe Bay, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids based on the locational running annual average, and failing to comply with the MCL of 0.080 mg/L for total trihalomethanes based on the locational running annual average; PENALTY: $351; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: ELR Land Investments, LLC; DOCKET NUMBER: 2019-1026-MLM-E; IDENTIFIER: RN110769502; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: commercial construction project; RULES VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing Zone; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $12,188; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2018-1384-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: plastics manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1) - (3), 113.100, 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2) and §63.11(b)(5), New Source Review (NSR) Permit Numbers 40157 and PSDTX1222, Special Conditions (SC) Number 8.B, NSR Permit Numbers 19201 and PSDTX1232, SC Number 7.B, NSR Permit Numbers 20203 and PSDTX1224, SC Number 6.B, Federal Operating Permit (FOP) Number O1957, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 10, and Texas Health and Safety Code (THSC), §382.085(b), by failing to operate a flare with a pilot flame present at all times; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 76305 and PSDTX1058, SC Number 1, FOP Number O3409, GTC and STC Number 8, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 76305 and PSDTX1058, SC Number 14, FOP Number O3409, GTC and STC Number 8, and THSC, §382.085(b), by failing to comply with the established six-minute average oxygen concentration limit; PENALTY: $56,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $22,500; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE:

6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: Ha Van Nguyen dba Austin Aqua System; DOCKET NUMBER: 2019-1099-PWS-E; IDENTIFIER: RN101197986; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to collect lead and copper tap samples for the January 1, 2014 - December 31, 2014, January 1, 2015 - December 31, 2015, January 1, 2016 - June 30, 2016, and July 1, 2016 - December 31, 2016, monitoring periods, failing to collect volatile organic chemical (VOC) contaminants samples for the fourth quarter of 2015, failing to report the results of VOC contaminants sampling to the ED for the third quarter of 2015, failing to report the results of nitrate sampling to the ED for the January 1, 2014 - December 31, 2014, monitoring period, and failing to report the results of cyanide sampling to the ED for the January 1, 2012 - December 31, 2014, monitoring period; 30 TAC §290.122(c)(2)(A) and (f) and TCEQ Agreed Order Docket Number 2014-1798-PWS-E, Ordering Provision Number 2.a.iii, by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfection 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 2015 through the fourth quarter of 2016; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12722 for calendar years 2014 through 2018; PENALTY: $747; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Harris County Water Control and Improvement District Number 70; DOCKET NUMBER: 2019-0867-MWD-E; IDENTIFIER: RN102183654; LOCATION: Crosby, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.63(b), by failing to provide an audiovisual alarm system on all lift stations; 30 TAC §217.123(b), by failing to dispose of screenings in a suitable container with a lid; 30 TAC §217.330(d), by failing to provide atmospheric vacuum breakers on all potable water washdown hoses; 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010530001, Operational Requirements Number 1, by failing to maintain a minimum dissolved oxygen concentration of 2.0 milligrams per liter (mg/L) throughout the basin at the maximum diurnal organic loading rate and to provide thorough mixing of the mixed liquor, and failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010530001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of treated wastewater into or adjacent to any water in the state; PENALTY: $27,392; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2019-0975-AIR-E; IDENTIFIER: RN100229905; LOCATION: La Porte, Harris 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 49823, Special Conditions Number 2, Federal Operating Permit Number O1439, General Terms and Conditions and Special Terms and Conditions Numbers 11 (effective November 2012) and 13 (effective November 2017), and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: $26,550; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Jerry Ung dba KU Food Mart; DOCKET NUMBER: 2019-1144-PST-E; IDENTIFIER: RN102385887; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: $37,551; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: LGL Investments LLC; DOCKET NUMBER: 2019-0719-PWS-E; IDENTIFIER: RN107282386; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director (ED) for review and approval prior to the construction of a new PWS; 30 TAC §290.39(m), by failing to provide written notification to the ED of the reactivation of an existing PWS system; 30 TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tank with a pressure release device; 30 TAC §290.43(e), by failing to ensure that the facility's 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 §290.45(c)(1)(B)(iii) and (f)(7) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 1.0 gallon per minute per unit; 30 TAC §290.45(c)(1)(B)(iv) and (f)(7) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of ten gallons per unit; 30 TAC §290.46(s), by failing to use accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment; and 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(14) COMPANY: M & H Manufacturing, Incorporated; DOCKET NUMBER: 2019-1621-WQ-E; IDENTIFIER: RN110867025; LOCATION: Longview, Gregg County; TYPE OF FACILITY: manufacturing company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: M & M Water Supply Corporation; DOCKET NUMBER: 2019-0775-PWS-E; IDENTIFIER: RN101185700; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to submit plans and specifications to the executive director and receive approval prior to instituting a significant change to the existing system; 30 TAC §290.41(c)(3)(L), by failing to ensure the well blow-off line discharge terminates in a downward direction and at a point which will not be submerged by flood waters for Well Numbers 1 and 3; 30 TAC §290.42(b)(2)(C), by failing to provide for subsequent disinfection

of the water ahead of ground storage tanks (GSTs) for all processes involving exposure of the water to atmospheric contamination; 30 TAC §290.42(e)(2), by failing to disinfect all water ahead of the GST and in a manner consistent with the requirements of 30 TAC §290.110; 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage readily available outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation, which includes both high level and floor level screened vents, for all enclosures in which gas chlorine is being stored or fed; 30 TAC §290.42(f)(1)(C), by failing to have a label that identifies the facility's or tank's contents for every chemical bulk storage facility and day tank; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(l), by failing to compile and keep up-to-date a thorough plant operations manual for operator review and reference; 30 TAC §290.43(c)(2), by failing to ensure that the roof hatch for GST Number 2 at Plant Number 1 remains locked except during inspections and maintenance; 30 TAC §290.43(c)(3), by failing to cover the overflow's discharge opening with a gravity-hinged and weighted cover, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances, which closes automatically and fits tightly with no gap over 1/16 inch; 30 TAC §290.44(h)(1), by failing to prevent a water connection from the public drinking water supply system to any residence or establishment where an actual or potential contamination hazard exists without ensuring the public water facilities are protected from contamination; 30 TAC §290.44(h)(1)(A), by failing to provide additional protection at the meter in the form of an air gap or backflow prevention assembly at any residence or establishment where an actual or potential contamination hazard exists; 30 TAC §290.44(h)(4), by failing to complete a test report by the recognized backflow prevention assembly tester for each assembly tested; 30 TAC §290.46(e) and (4)(C), by failing to ensure that the production, treatment, and distribution facilities at the public water system are operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director (ED), and failing to use at least two operators who hold a Class C or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities; 30 TAC §290.46(f)(2) and (3)(A)(ii)(II), (B)(iii), and (C)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(j), by failing to ensure that any customer service inspection certificate form which varies from the format found in commission Form 20699 is approved by the ED prior to being placed in use; 30 TAC §290.46(j)(1)(A) and (B), by failing to have all customer service inspections conducted by an individual that is a Plumber Inspector or Water Supply Protection Specialist licensed by the Texas State Board of Plumbing Examiners or by a Customer Service Inspector who has completed a commission approved course, passed an examination administered by the ED, and holds current professional certification or endorsement as a Customer Service Inspector; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 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(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the well meter for Well Number 1 at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual chlorine dioxide residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(u), by failing to ensure that wells that are not in use and are non-deteriorated as defined in 16 TAC Chapter 76 are tested every five years or as required by the ED to prove that they are in a non-deteriorated condition; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: $9,660; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Marion J. Smith dba Town North Village Water System and Cox Addition Water System and Town North Estates; DOCKET NUMBER: 2019-0430-PWS-E; IDENTIFIERS: RN101272060, RN101221117, and RN101270890; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: public water supplies; RULES VIOLATED: 30 TAC §290.109(d)(4)(B), by failing to collect within 24 hours of notification of the routine distribution total coliform-positive sample on March 28, 2018, at least one raw 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; 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 executive director (ED) for the July 1, 2018 - December 31, 2018, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that each consumer notification was distributed in a manner consistent with TCEQ requirements for the January 1, 2016 - December 31, 2016, and January 1, 2017 - June 30, 2017, monitoring periods; 30 TAC §290.117(n), by failing to comply with the additional sampling requirements as required by the ED to ensure that minimal levels of corrosion are maintained in the distribution system; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the maximum contaminant level (MCL) for arsenic for the second quarter of 2018; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for fluoride for the second quarter of 2018; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, monitoring period; and 30 TAC §290.274(a) and (c), by failing to submit to the TCEQ by July 1st for each year a copy of the annual Consumer Confidence Report (CCR) and certification that the CCR was distributed to the customers of the facility and that the information on the CCR is correct and consistent with compliance monitoring data for calendar year 2017; PENALTY: $3,238; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: MEBB ENTERPRISES, LLC; DOCKET NUMBER: 2019-0285-PWS-E; IDENTIFIER: RN101245181; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iii), and Texas Health and Safety Code, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection, and failing to

provide two or more pumps that have a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; PENALTY: $1,080; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Miller Milling Company, LLC; DOCKET NUMBER: 2019-1112-AIR-E; IDENTIFIER: RN100746262; LOCATION: Saginaw, Tarrant County; TYPE OF FACILITY: flour mill; RULES VIOLATED: 30 TAC §116.110(a) and §116.116(b)(1) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain a permit amendment prior to constructing or modifying a source of air contaminants; 30 TAC §116.115(b)(2)(A), New Source Review (NSR) Permit Number 40089, General Conditions (GC) Number 3, and THSC, §382.085(b), by failing to report the start of construction no later than 15 working days after occurrence of the event; and 30 TAC §116.115(b)(2)(B)(i), NSR Permit Number 40089, GC Number 4, and THSC, §382.085(b), by failing to provide a notification prior to the commencement of operations; PENALTY: $10,291; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: New NGC, Incorporated dba National Gypsum; DOCKET NUMBER: 2019-1088-MLM-E; IDENTIFIER: RN105937403; LOCATION: Harper, Kimble County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $47,750; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: Oldcastle Infrastructure, Incorporated; DOCKET NUMBER: 2019-0808-AIR-E; IDENTIFIER: RN100570399; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(10), Standard Permit Registration (SPR) Number 46822, Air Quality Standard Permit for Concrete Batch Plants, Special Conditions Number (3)(E), and Texas Health and Safety Code (THSC), §382.085(b), by failing to minimize dust emissions from all in-plant roads and traffic areas associated with the operation of the concrete batch plant at all times; and 30 TAC §116.615(2), SPR Number 46822, and THSC, §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Rowena Water Supply Corporation; DOCKET NUMBER: 2019-1043-MLM-E; IDENTIFIER: RN101450757; LOCATION: Rowena, Runnels County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards and is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch; 30 TAC §290.43(c)(4), by failing to provide the elevated storage tank (EST) with a liquid level indicator; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connection nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's EST and two ground storage tanks annually; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 30 TAC §290.46(z), by failing to create a nitrification action plan for systems distributing chloraminated water; 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; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: $1,417; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(22) COMPANY: Salado Operations, LLC; DOCKET NUMBER: 2019-0833-MLM-E; IDENTIFIER: RN104888193; LOCATION: Lueders, Shackleford County; TYPE OF FACILITY: limestone quarry and mill; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, or using state water; and 30 TAC §334.127(b), by failing to register all aboveground storage tanks in existence on or after September 1, 1989, with the TCEQ; PENALTY: $1,872; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: UNITED PARCEL SERVICE, INCORPORATED; DOCKET NUMBER: 2019-0938-PST-E; IDENTIFIER: RN101485670; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; 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: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: JOSEPH T. VICK, SR.; DOCKET NUMBER: 2019-1612-WOC-E; IDENTIFIER: RN109061028; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79414-3426, (817) 588-5800.

(25) COMPANY: WINDSOR WATER COMPANY; DOCKET NUMBER: 2019-1087-MLM-E; IDENTIFIER: RN101455640; LOCATION: Waco, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review

and reference; 30 TAC §290.43(c)(3), by failing to ensure that the discharge opening of the overflow is covered with a gravity-hinged and weighted cover, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (D)(ii), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m), 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(m)(1)(A), by failing to conduct an annual inspection of the facility's one ground storage tank at Plant Number 1; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $1,267; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201904530
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 3, 2019

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## Enforcement Orders

An agreed order was adopted regarding Raul Gomez, Docket No. 2017-1624-MLM-E on December 3, 2019, assessing $3,802 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 2015 S & A, LLC dba First Stop, Docket No. 2018-0278-PST-E on December 3, 2019, assessing $6,424 in administrative penalties with $1,284 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Joshua Xiong dba Twin Lakes Water and Chong Bai Xia dba Twin Lakes Water, Docket No. 2018-0424-PWS-E on December 3, 2019, assessing $6,454 in administrative penalties with $1,290 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PILOT POINT RURAL WATER SUPPLY, INC., Docket No. 2018-0616-MLM-E on December 3, 2019, assessing $4,952 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding COUNTRY TERRACE WATER COMPANY, INC., Docket No. 2018-0903-MLM-E on December 3, 2019, assessing $3,100 in administrative penalties with $620 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Herman Granger dba Granger Utilities and Angela Granger dba Granger Utilities, Docket No. 2018-0949-PWS-E on December 3, 2019, assessing $1,841 in administrative penalties with $368 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Williamson County, Docket No. 2018-0982-EAQ-E on December 3, 2019, assessing $6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding German Pellets Texas, LLC, Docket No. 2018-1204-AIR-E on December 3, 2019, assessing $6,332 in administrative penalties with $1,266 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SMITH BEND WATER SUPPLY CORPORATION, Docket No. 2018-1431-PWS-E on December 3, 2019, assessing $52 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pyote Well Service, LLC, Docket No. 2018-1546-TTR-E on December 3, 2019, assessing $1,000 in administrative penalties with $200 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2018-1557-AIR-E on December 3, 2019, assessing $6,563 in administrative penalties with $1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding B.A.I. BUSINESS LLC dba Sealy Truck Stop, Docket No. 2018-1574-PST-E on December 3, 2019, assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Ben Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Affordable Funerals, LLC, Docket No. 2018-1594-AIR-E on December 3, 2019, assessing $4,538 in administrative penalties with $907 deferred. Information concerning

any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Beattie Cattle, LLC, Docket No. 2018-1626-AGR-E on December 3, 2019, assessing $4,876 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SOUTHWEST SHIPYARD, L.P., Docket No. 2018-1680-AIR-E on December 3, 2019, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tina Lee Tilles dba 14200 Stuebner Airline Office Warehouse, Docket No. 2018-1699-PWS-E on December 3, 2019, assessing $409 in administrative penalties with $81 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sokunthea Im and Chenda Im dba Sunrise Food Mart, Docket No. 2018-1740-PST-E on December 3, 2019, assessing $6,300 in administrative penalties with $1,260 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bells Petro, Inc. dba Bells Market, Docket No. 2018-1754-PST-E on December 3, 2019, assessing $4,249 in administrative penalties with $849 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2019-0103-AIR-E on December 3, 2019, assessing $3,881 in administrative penalties with $776 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Safety-Kleen Systems, Inc., Docket No. 2019-0146-AIR-E on December 3, 2019, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Owens Corning Insulating Systems, LLC, Docket No. 2019-0153-AIR-E on December 3, 2019, assessing $6,563 in administrative penalties with $1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Dilley, Docket No. 2019-0164-MLM-E on December 3, 2019, assessing $2,625 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Neil Proulx, Docket No. 2019-0170-MLM-E on December 3, 2019, assessing $2,726 in administrative penalties with $545 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUDDUTH WATER SUPPLY, INC., Docket No. 2019-0187-MLM-E on December 3, 2019, assessing $1,193 in administrative penalties with $238 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding David Clark Whaley, Kathy Lynn Whaley, and Jordan David Whaley, as Trustees of David and Kathy Whaley Family Trust dba Whaley Heifer Ranch, Docket No. 2019-0262-AGR-E on December 3, 2019, assessing $813 in administrative penalties with $162 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rambling Vines RVP, L.L.C., Docket No. 2019-0274-PWS-E on December 3, 2019, assessing $257 in administrative penalties with $51 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Twin Lakes Petroleum Enterprises, Inc. dba Twin Stop 3, Docket No. 2019-0278-PST-E on December 3, 2019, assessing $2,563 in administrative penalties with $512 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2019-0292-PST-E on December 3, 2019, assessing $2,813 in administrative penalties with $562 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Sundown, Docket No. 2019-0295-MWD-E on December 3, 2019, assessing $6,562 in administrative penalties with $1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Robert Martin, Docket No. 2019-0318-MLM-E on December 3, 2019, assessing $3,015 in administrative penalties with $603 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BAYTOWN ASPHALT MATERIALS, LTD., Docket No. 2019-0321-PST-E on December 3, 2019, assessing $3,728 in administrative penalties with $745 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YOAKUM, INC. dba Get N Go Food Mart 4, Docket No. 2019-0331-PST-E on December 3, 2019, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HIDALGO NORTH PROPERTIES, INC. dba El Tigre Food Store 15, Docket No. 2019-0349-PST-E on December 3, 2019, assessing $1,575 in administrative penalties with $315 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAVASOTA OIL CO., INC., Docket No. 2019-0370-PST-E on December 3, 2019, assessing $6,021 in administrative penalties with $1,204 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Horseshoe Bay, Docket No. 2019-0393-PWS-E on December 3, 2019, assessing $1,260 in administrative penalties with $252 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midway Range, LLC, Docket No. 2019-0403-PWS-E on December 3, 2019, assessing $1,200 in administrative penalties with $240 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grace Chapel Assembly of God of Magnolia, Docket No. 2019-0404-PWS-E on December 3, 2019, assessing $165 in administrative penalties with $33 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Proline Energy Resources Inc, Docket No. 2019-0408-AIR-E on December 3, 2019, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Proline Energy Resources Inc, Docket No. 2019-0409-AIR-E on December 3, 2019, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Proline Energy Resources Inc, Docket No. 2019-0410-AIR-E on December 3, 2019, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oney Enterprises LLC dba I Stop, Docket No. 2019-0419-PST-E on December 3, 2019, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris-Fort Bend Counties Municipal Utility District No. 3, Docket No. 2019-0422-PWS-E on December 3, 2019, assessing $900 in administrative penalties with $180 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rita's Convenience Store and Restaurant, LLC dba RITAS, Docket No. 2019-0432-PST-E on December 3, 2019, assessing $3,685 in administrative penalties with $737 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OM Db Investment, Inc. dba A to Z Discount Stop, Docket No. 2019-0445-PST-E on December 3, 2019, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Siddhibinayak Enterprises Inc dba Taylor Food Mart, Docket No. 2019-0447-PWS-E on December 3, 2019, assessing $355 in administrative penalties with $71 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PRUSKI'S MARKET, INC., Docket No. 2019-0465-PST-E on December 3, 2019, assessing $5,937 in administrative penalties with $1,187 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mansfield Sand & Select, LLC, Docket No. 2019-0474-WQ-E on December 3, 2019, assessing $1,188 in administrative penalties with $237 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Big Spring Independent School District, Docket No. 2019-0498-PST-E on December 3, 2019, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Barry W. Blanton dba Thorp Springs Water, Docket No. 2019-0527-PWS-E on December 3, 2019, assessing $437 in administrative penalties with $87 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAMB COUNTY ELECTRIC COOPERATIVE, INC., Docket No. 2019-0532-PST-E on December 3, 2019, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Harrison Water Supply Corporation, Docket No. 2019-0535-PWS-E on December 3, 2019, assessing $250 in administrative penalties with $50 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CW-MHP, Ltd., Docket No. 2019-0562-PWS-E on December 3, 2019, assessing $1,772 in administrative penalties with $354 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding L. H. CHANEY MATERIALS, INC. dba Chaney Trucking, Docket No. 2019-0568-PST-E on December 3, 2019, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GH Case Company, Inc., Docket No. 2019-0593-AIR-E on December 3, 2019, assessing $1,250 in administrative penalties with $250 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of West, Docket No. 2019-0596-MWD-E on December 3, 2019, assessing $7,250 in administrative penalties with $1,450 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Royalwood Municipal Utility District, Docket No. 2019-0602-PWS-E on December 3, 2019, assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Georgetown Baptist Church, Docket No. 2019-0635-PWS-E on December 3, 2019, assessing $450 in administrative penalties with $90 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding R B B AND DOCK INVESTMENTS, LLC, Docket No. 2019-0648-PWS-E on December 3, 2019, assessing $2,202 in administrative penalties with $440 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alford Rentals, LLC, Docket No. 2019-0713-PWS-E on December 3, 2019, assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EL PASO RIO ELECTRIC, INC., Docket No. 2019-0720-WQ-E on December 3, 2019, assessing $2,375 in administrative penalties with $475 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of White Oak, Docket No. 2019-0754-PWS-E on December 3, 2019, assessing $300 in administrative penalties with $60 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Forney, Docket No. 2019-0794-PWS-E on December 3, 2019, assessing $862 in administrative penalties with $172 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201904561
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2019

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## Notice of District Petition

Notice issued November 21, 2019

TCEQ Internal Control No. D-10162019-038; Clayton Properties Group, Inc., a Tennessee corporation doing business in Texas as Brohn Homes (Petitioner), filed a petition for creation of Altessa Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code, Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 283.115 acres located within Travis and Bastrop Counties, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Elgin, Texas and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2019-08-06-29, passed and approved August 6, 2019, the City of Elgin gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will purchase, design, construct, acquire, maintain, operate, improve, and extend water, wastewater, drainage, road, and park and recreational facilities for residential purposes. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated

by the Petitioner, from the information available at this time, that the cost of said project will be approximately $37,755,000 (including $30,000,000 for utilities plus $6,620,000 for roads plus $1,135,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-201904550
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2019

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Notice of Hearing, Camp Champions Texas L.P.:
SOAH Docket No. 582-20-1022; TCEQ Docket No. 2019-0901-MWD; Permit No. WQ0015643001

**APPLICATION.**

Camp Champions Texas L.P., 775 Camp Road, Marble Falls, Texas 78654, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, TCEQ Permit No. WQ0015643001 to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 - 20,000 gallons per day (seasonal) via surface irrigation of 6.2 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on January 18, 2018.

The wastewater treatment facility and disposal site will be located approximately 0.27 mile southwest of the intersection of County Road 125/Highland Drive and Farm-to-Market Road 1431, in Burnet County, Texas 78654. The wastewater treatment facility and disposal site will be located in the drainage basin of Lake Lyndon B. Johnson in Segment No. 1406 of the Colorado River Basin. As a public courtesy, we have provided the following webpage to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.398055%2C30.614722&level=12. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Burnet County Courthouse, Office of the County Clerk, 220 South Pierce Street, Burnet, Texas.

**CONTESTED CASE HEARING.**

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - January 27, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 1, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."**

**INFORMATION.**

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from Camp Champions Texas L.P. at the address stated above or by calling Mr. Robert Callegari, CMA Engineering, Inc., at (512) 432-1000.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: November 20, 2019

TRD-201904551
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2019

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## Notice of Opportunity to Comment on Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 17, 2020.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 17, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Bowles Redi Mix, Inc.; DOCKET NUMBER: 2019-0235-AIR-E; TCEQ ID NUMBER: RN106095573; LOCATION: 200 Sandtown Road, Avalon, Ellis County; TYPE OF FACILITY: concrete batch plant (Plant); RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §101.24(b), by failing to submit the emissions/inspection fee basis form within 60 days after being provided the emissions/inspection fee information packet; THSC, §382.085(b), 30 TAC §116.115(c), and Standard Permit Registration Number 95190, Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, Special Condition (SC) Design and Operating Requirement Number (3)(E), by failing to pave each road, parking lot, or other area at the Plant used by vehicles with a cohesive hard surface to minimize dust emissions; and THSC, §382.085(b), 30 TAC §116.115(c), and Standard Permit Registration Number 95190, Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, SC Design and Operating Requirement Number (3)(D), by failing to install a warning device on each bulk storage silo; PENALTY: $3,412; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201904531
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 3, 2019

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## Notice of Public Hearing on Proposed New 30 TAC Chapter 352

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new 30 TAC Chapter 352, Coal Combustion Residuals Waste Management, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would create Chapter 352 to implement a new coal combustion residuals (CCR) management program for owners and operators of landfills and surface impoundments used to manage or dispose of CCR generated from the combustion of coal by electric utilities and independent power producers. Proposed new Chapter 352 would establish a registration requirement as well as compliance monitoring for regulated facilities.

The commission will hold a public hearing on this proposal on January 9, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, Austin, Texas 78753. 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 2017-037-352-WS. The comment period closes on January 21, 2020. 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 Ms. Charly Fritz, Waste Permits Division, at (512) 239-2331.

TRD-201904476
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 101

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 101, General Air Quality Rules, §101.601, under the requirements of Texas Health and Safety Code, §382.017; Texas Water Code, §5.103; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bill 698 from the 86th Legislature, 2019, by amending §101.601 to include full-time equivalent employees as an expense that may be fully paid for by the surcharge collected for an expedited application.

The commission will hold a public hearing on this proposal on January 7, 2020, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, Austin, Texas 78753. 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. 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 2019-127-101-AI. The comment period closes January 21, 2020. 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 Ms. Sherry Davis, Air Permits Division, at (512) 239-2141.

TRD-201904440
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 331

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 331, Underground Injection Control, §331.19 under the requirements of Texas Water Code, Chapter 27; Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bill (SB) 483 and SB 520, 86th Texas Legislature, 2019, relating to certain injection wells in the Edwards Aquifer and injection wells within the boundaries of the Barton Springs Edwards Aquifer Conservation District, including injection wells used for aquifer storage and recovery projects.

The commission will hold a public hearing on this proposal on January 14, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, Austin, Texas 78753. 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 2019-117-331-WS. The comment period closes January 21, 2020. 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 Carol Dye, P.G., Underground Injection Control Permits Section, (512) 239-1504.

TRD-201904463
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39, 281, 295, 297, and 331

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 39, Public Notice, §39.651; Chapter 281, Applications Processing; §281.19; Chapter 295, Water Rights, Procedural, §295.158; Chapter 297, Water Rights, Substantive, §297.1 and §§297.41 - 297.43; Chapter 331, Underground Injection Control, §§331.2, 331.7, 331.9, and 331.131; and new §§331.262 - 331.267 under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bills 720 and 1964, 86th Texas Legislature, 2019. The rulemaking would amend existing requirements for underground injection control program public notice to include aquifer recharge (AR) projects; amend existing definitions, authorization mechanisms, standards, and requirements to include new standards for AR projects; and add new Chapter 331, Subchapter O to implement Texas Water Code (TWC), Chapter 27, Subchapter H. The proposed rulemaking would also amend existing requirements for water right applications related to technical review and public notice; add and revise definitions; define availability criteria for various types of AR and aquifer storage and recovery projects; and implement the provisions of TWC, §§11.023, 11.122(b-3), 11.157, and 11.158. The proposed rulemaking would also remove obsolete text in §39.651(e) as a result of the Quadrennial Review of Chapter 39.

The commission will hold a public hearing on this proposal on January 7, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, Austin, Texas 78753. 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 2019-116-297-OW. The comment period closes on January 21, 2020. 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 Kathy Ramirez, Water Availability Division, at (512) 239-6757.

TRD-201904449
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 22, 2019

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## Notice of Water Quality Applications

The following notices were issued on November 20, 2019.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 148 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0011818003 to authorize the discharge of treated domestic wastewater at a daily average not to exceed an interim phase flow phase of 0.65 million gallons per day (MGD). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.95 MGD in the Final phase. The facility is 1,400 feet south of the intersection of Greensbrook Forest Drive and Greenspark Lane, 2,800 feet west of Lockwood Road, in Harris County, Texas 77044.

Fort Bend County Municipal Utility District No. 131 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014197001 to authorize an addition of an interim phase with a daily average flow not to exceed of 640,000 gallons per day. The facility is located at 236 Kestrel Lane, in Fort Bend County, Texas 77583.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201904552
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 2019

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## Notice of Water Use Permit

Issued: November 22, 2019

WATER USE PERMIT No. 12606; Sunrise Municipal Utility District of Hunt County, 19 Briar Hollow Ln, Suite 245, Houston, Texas 77027, Applicant, seeks authorization to extend the time to commence and complete the construction of a dam located on Jones Creek, Sabine River Basin. The application and partial fees were received on July 18, 2019. Additional fees were received on September 11, 2019. The application was declared administratively complete and filed with office of the Chief Clerk on September 19, 2019. The Executive Director has determined the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also consider whether the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to commence and complete construction. The application, technical memorandum, and Executive Director's draft Order are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201904553
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 4, 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 November 18, 2019, to November 26, 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, December 6, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, January 5, 2019.

FEDERAL AGENCY ACTIONS:

**Applicant:** Chevron Phillips Chemical Company LP

**Location:** The project site is located in wetlands adjacent to Taylor Bayou, approximately 12.5 miles south of Beaumont, within Jefferson County, Texas.

**Latitude & Longitude (NAD 83):** 29.903560, -94.123403

**Project Description:** The applicant proposes to permanently fill 6.586 acres of palustrine emergent wetlands (PEM) and 11 linear feet of ephemeral stream in order to construct new pipeline isolation valves, pig traps, switching stations, and an access road in order to connect existing and future pipeline infrastructure.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00600. 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:** 20-1068-F1

**Applicant:** Kingwood Exploration, LLC

**Location:** The project site is located in wetlands to the east of Mud Lake, near the JD Murphree Wildlife Management Area, in Jefferson County, Texas.

**Latitude & Longitude (NAD 83):** 29.7762, -93.9742

**Project Description:** The applicant proposes to discharge 3,719 cubic yards of clay, 743 cubic yards of limestone rock, and 189 cubic yards of indigenous soil into 0.998 acres of tidal wetlands to construct the McFaddin Ranch #17 and #18 well sites. The construction activities include repair of the existing ring levee, expansion of the existing well pad to 150' by 250' and stabilization of the access road.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00658. 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:** 20-1069-F1

**Applicant:** Seabrook Shipyard

**Location:** The project site is located in Clear Creek, at 1900 Shipyard Drive, in Seabrook, Harris County, Texas.

**Latitude & Longitude (NAD 83):** 29.552755, -95.025041

**Project Description:** The applicant proposes to construct multiple boat docks along both sides of Cut-Off Bayou. The eastern shoreline will consist of a T-head dock (8-foot-wide by 360-foot-long) with 12 slips and 9 docking sections, and along the western shoreline a T-head (8-foot-wide by 1,440-foot-long) dock with 24 slips and 36 docking sections.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-1999-00480. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

**CMP Project No:** 20-1066-F1

**Applicant:** Aransas County

**Location:** The project is located in Aransas Bay along Shell Ridge Road in Rockport, Aransas County, Texas.

**Latitude & Longitude (NAD 83):** 27.998262, -97.060607

**Project Description:** The applicant proposes a living shoreline involving the following components: (1) planting with native marsh and coastal vegetation along the shoreline; and (2) construction of offshore segmented riprap breakwaters. The purpose of the shoreline planting component is to stabilize the soil, help absorb low-energy waves, and provide new habitat. The planting will establish approximately 0.6 acres of new marsh vegetation along approximately 1,300 linear feet of the Shell Ridge Road shoreline which will include, but not be limited to smooth cordgrass *(Spartina alterniflora),* marsh hay cordgrass *(Spartina patens),* and/or sea ox-eye daisy *(Borrichia frutescens).* The majority of this planting will be located above the mean higher high water (MHHW) line as shown in the attached drawings. The purpose of the offshore riprap breakwater component is to reduce wave transmission further offshore; this is anticipated to create a low-energy water environment in the lee of the breakwaters, thereby reducing the risk of erosion along the shoreline, protecting the roadway from unobstructed wave attack, providing suitable conditions to protect existing seagrass and promote the growth of new vegetation. The offshore breakwaters will be constructed with approximately 7,500 cubic yards of stone riprap, to an approximate elevation of +4.0 feet NAVD88 with 2H:1V side slopes and a 3-foot crest width and will have a total footprint of approximately 2 acres. The breakwaters will be segmented, having gaps between them ranging from 15 feet to 50 feet as shown in the attached permit drawings. Gaps have been incorporated and designed to allow for proper tidal flushing and water circulation, while also ensuring property owners can access the piers via boat. The navigable gap widths were set based on applicable design standards for safe navigation.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00744. 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. 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:** 20-1072-F1

**Applicant:** Aransas County

**Location:** The project is located in Saint Charles Bay along Lamar Beach Road waterfront. Lamar Beach Road is located east of Palmetto Street and extends from 12th Street at the northern end to Main Street at the southern end in Rockport, Aransas County, Texas.

**Latitude & Longitude (NAD 83):** 28.145051, -96.974469

**Project Description:** The applicant proposes shoreline restoration and planting components to stabilize the soil, help absorb low-energy waves, and provide new habitat conditions. The planting will establish approximately 1.1 acres of new marsh vegetation along approximately 3,600 linear feet of the Lamar Beach Road shoreline, which will include, but not be limited to smooth cordgrass *(Spartina alterniflora),* marsh hay cordgrass *(Spartina patens),* and/or sea ox-eye daisy *(Borrichia frutescens).* The majority of this planting will be located above the mean higher high water (MHHW) line, as shown in the attached drawings. A total of 200 cubic yards of fill material (sand) will be placed along the shoreline (to establish the stable slope) below the MHHW line and is designed to have a volume less than 1 cubic yard per linear foot. Fill will not be placed within any existing seagrass beds. The offshore breakwaters will be constructed with approximately 16,700 cubic yards of stone riprap mixed with reused concrete riprap (removed from the project shoreline), which will be incorporated into the core or bedding layer of the breakwaters where possible. Excess or unusable concrete will be disposed of offsite at an upland waste disposal area. The offshore breakwaters will be constructed to an approximate elevation of +4.0 feet NAVD88 with 2H:1V side slopes and a 3-foot crest width and will have a total footprint of approximately 3 acres. The breakwaters will be segmented, having gaps between them ranging from 30 feet to 135 feet wide as shown in the attached permit drawings. The gaps have been incorporated and designed to allow for proper tidal flushing and water circulation, while also ensuring property owners can access their piers via boat. The navigable gap widths were set based on applicable design standards for safe navigation.

**Type of Application:** U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00743. 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. 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:** 20-1073-F1

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-201904535
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: December 3, 2019

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## Office of the Governor

Notice of Available Funding Opportunities

Office of the Governor, Public Safety Office (PSO)

The Criminal Justice Division (CJD), located in the PSO, is announcing the following funding opportunities for State Fiscal Year 2021. Details for these opportunities, including the open and close date for the solicitation, can be found on the eGrants Calendar (https://eGrants.gov.texas.gov/fundopp.aspx).

--Campus Victim Assistance Program - The purpose of this announcement is to solicit applications for projects seeking to build a culture for victim services on Texas campuses that centers on readily meeting victims with empathy and support to quicken their recovery process.

--Crime Stoppers Assistance Fund - The purpose of this announcement is to solicit applications to strategically support, expand, and fund local certified Texas Crime Stoppers organizations that help protect our communities.

--Criminal Justice Programs - The purpose of this announcement is to solicit applications for projects that promote public safety, reduce crime, and improve the criminal justice system.

--First Responder Mental Health Program - The purpose of this announcement is to solicit applications to provide services and assistance directly to peace officers and first responders to address direct and indirect trauma that occurs in the course of their normal duties either as the result of the commission of crimes by other persons or in response to an emergency.

--General Victim Assistance Grant Program - The purpose of this announcement is to solicit applications to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process.

--Internet Crimes Against Children Grant Program - The purpose of this announcement is to solicit applications for projects that develop an effective response to technology-facilitated child sexual exploitation and Internet crimes against children that encompasses forensic and investigative components, training and technical assistance, victim services, and community education.

--Juvenile Justice and Truancy Prevention Grant Program - The purpose of this announcement is to solicit applications for projects that prevent violence in and around school; and to improve the juvenile justice system by providing mental health services, truancy prevention and intervention through community-based and school programs.

--Project Safe Neighborhoods Program - The purpose of this announcement is to solicit applications for projects that are designed to create and foster safer neighborhoods through a sustained reduction in violent crime, including, but not limited to, addressing criminal gangs and felonious possession and use of firearms.

--Residential and Community-Based Services for Victims of Commercial Sexual Exploitation of Children - The purpose of this announcement is to solicit applications to recover victims of Commercial Sexual Exploitation of Youth (CSEY) through collaborative efforts spanning multiple systems and to support the healing of survivors of CSEY through immediate and long-term services and supports they need to heal and thrive.

--Residential Substance Abuse Treatment (RSAT) Program - The purpose of this announcement is to solicit applications to provide residential substance abuse treatment within local correctional and detention facilities.

--Rifle-Resistant Body Armor Grant Program - The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with rifle-resistant body armor.

--Sexual Assault Evidence Testing Program - The purpose of this announcement is to solicit applications from law enforcement agencies

for costs associated with the forensic analysis of physical evidence in relation to sexual assault or other sex offenses.

--Specialty Courts Program - The purpose of this announcement is to solicit applications for specialty court programs as defined in Chapters 121 through 129 of the Texas Government Code.

--Violence Against Women Criminal Justice and Training Projects (Domestic Violence, Sexual Assault, Dating Violence, and Stalking) - The purpose of this announcement is to solicit applications for projects that promote a coordinated, multi-disciplinary approach to improve the justice system's response to violent crimes against women, including domestic violence, sexual assault, dating violence, and stalking.

The Homeland Security Grants Division (HSGD), located in the PSO, is announcing the following funding opportunities for State Fiscal Year 2021. Details for these opportunities, including the open and close date for the solicitation, can be found on the eGrants Calendar (https://eGrants.gov.texas.gov/fundopp.aspx).

--State Homeland Security Grant Program (LETPA and Regular Projects) - The purpose of this announcement is to solicit applications for projects that support state and local efforts to prevent terrorism and other catastrophic events and prepare for the threats and hazards that pose the greatest risk to the security of Texas citizens. HSGD provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving a secure and resilient state.

TRD-201904564
Aimee Snoddy
Executive Director, Public Safety Office
Office of the Governor
Filed: December 4, 2019

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## Texas Health and Human Services Commission

### Public Notice for Intermediate Care Facility for Individuals With an Intellectual Disability or Related Conditions (ICF/IID) Program

Requests to redistribute certified capacity in the Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program.

In accordance with Texas Administrative Code, Title 40, §9.214, the Health and Human Services Commission (HHSC) announces that it is accepting requests from ICF/IID program providers to redistribute the certified capacity of their facilities. Requests will be accepted through February 28, 2020.

In reviewing requests, HHSC will consider, in part, the resulting improvement in utilization of ICF/IID resources, cost effectiveness and the benefit to facility residents. In addition, HHSC will not approve redistribution that results in a new facility having a capacity of greater than six.

After reviewing the submitted requests, HHSC may negotiate a plan and enter into an agreement with the program provider to redistribute ICF/IID certified capacity.

Requests may be submitted via U.S. mail or by email as follows:

**U.S. Mail**

Texas Health and Human Services Commission

Attn: Stephanie Allred, Ph.D., Director

Long-term Care Regulatory

P.O. Box 149030

Mail Code: E-335

Austin, TX 78714-9030

**Email**

stephanie.allred@hhsc.state.tx.us

TRD-201904537
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: December 3, 2019

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### Public Notice: SUPPORT for Patients and Communities Act

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 19-0000 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of the amendment is to implement Section 1004 of the federal Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (P.L. 115-271), known as the "SUPPORT for Patients and Communities Act," and the recent changes to Texas Human Resources Code Section 32.024(z-2) and Texas Health & Safety Code Section 481.07636 regarding the three prescription per month limit.

The purpose of this amendment is to:

--Articulate claims review requirements such as prospective and retrospective Drug Utilization Review (DUR) activities on opioid prescriptions, policies related to safety edits on maximum daily morphine milligram equivalents (MME) to limit the daily MME (as recommended by clinical guidelines), DUR warning messages for concurrent use, retrospective reviews on opioid overutilization to monitor prescribers for outlier activities, monitoring antipsychotic medications to children, and fraud and abuse identification.

--For persons age 21 and older, exempt prescriptions for opioids to treat acute pain under Texas Health & Safety Code Section 481.07636 from the three prescription per month limit, with the goal of improving health outcomes for Medicaid/CHIP beneficiaries.

The amendment will be submitted by December 31, 2019, and is effective December 1, 2019.

To obtain copies of the proposed amendment, interested parties may contact Courtney Pool, State Plan Specialist, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 424-6889; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-201904483
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 22, 2019

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## Texas Lottery Commission

### Scratch Ticket Game Number 2199 "88 FORTUNES®"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2199 is "88 FORTUNES®". The play style is "find symbol".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2199 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2199.

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: HORSESHOE SYMBOL, PEACH SYMBOL, VAULT SYMBOL, CREDIT CARDS SYMBOL, PURSE SYMBOL, GOLD BAR SYMBOL, COCONUT SYMBOL, POKER CHIPS SYMBOL, MONEY STACK SYMBOL, BANKROLL SYMBOL, POT OF GOLD SYMBOL, PIGGY BANK SYMBOL, TURTLE SYMBOL, BIRD SYMBOL, VASE SYMBOL, SHIP SYMBOL, BANANA SYMBOL, KIWI SYMBOL, CHERRY SYMBOL, SEVEN SYMBOL, LEMON SYMBOL, PLUM SYMBOL, BELL SYMBOL, STRAWBERRY SYMBOL, WATERMELON SYMBOL, ORANGE SYMBOL, CLOVER SYMBOL, APPLE SYMBOL, PEAR SYMBOL, PINEAPPLE SYMBOL, GRAPES SYMBOL, COIN SYMBOL, 88 SYMBOL, 2X SYMBOL, 5X SYMBOL, $5, $10, $15, $20, $25, $50, $88, $100, $500, $5,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2199 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| HORSESHOE SYMBOL | HSHOE |
| PEACH SYMBOL | PEACH |
| VAULT SYMBOL | VAULT |
| CREDIT CARDS SYMBOL | CARDS |
| PURSE SYMBOL | PURSE |
| GOLD BAR SYMBOL | GOLD |
| COCONUT SYMBOL | COCONUT |
| POKER CHIPS SYMBOL | CHIPS |
| MONEY STACK SYMBOL | STACK |
| BANKROLL SYMBOL | ROLL |
| POT OF GOLD SYMBOL | POTGLD |
| PIGGY BANK SYMBOL | PIGBANK |
| TURTLE SYMBOL | TURTLE |
| BIRD SYMBOL | BIRD |
| VASE SYMBOL | VASE |
| SHIP SYMBOL | SHIP |
| BANANA SYMBOL | BANANA |
| KIWI SYMBOL | KIWI |
| CHERRY SYMBOL | CHERRY |
| SEVEN SYMBOL | SVN |
| LEMON SYMBOL | LEMON |
| PLUM SYMBOL | PLUM |
| BELL SYMBOL | BELL |
| STRAWBERRY SYMBOL | STWBERRY |
| WATERMELON SYMBOL | WATRMELL |
| ORANGE SYMBOL | ORANGE |
| CLOVER SYMBOL | CLOVER |
| APPLE SYMBOL | APPLE |
| PEAR SYMBOL | PEAR |
| PINEAPPLE SYMBOL | PINEAPPLE |
| GRAPES SYMBOL | GRAPES |
| COIN SYMBOL | WIN$ |
| 88 SYMBOL | WIN$88 |
| 2X SYMBOL | WINX2 |
| 5X SYMBOL | WINX5 |
| $5 | FIVDOL |
| $10 | TENDOL |

| | |
|---|---|
| $15 | FIFTN |
| $20 | TWENTY |
| $25 | TWYFIV |
| $50 | FIFTY |
| $88 | ETYEGT |
| $100 | ONEHUN |
| $500 | FIVHUN |
| $5,000 | FIVTHO |
| $100,000 | ONHNTHO |

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 (2199), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2199-0000001-001.

H. Pack - A Pack of the "88 FORTUNES®" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "88 FORTUNES®" Scratch Ticket Game No. 2199.

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 "88 FORTUNES®" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty Play Symbols. If a player reveals a "COIN" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals an "88" Play Symbol, the player wins $88 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 forty Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty 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. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. A non-winning Prize Symbol will never match a winning Prize Symbol, unless restricted by other parameters, play action or prize structure.

D. A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

E. No matching non-winning Play Symbols on a Ticket.

F. The "2X" (WINX2) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

G. The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

H. The "88" (WIN$88) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure and will only appear with the $88 Prize Symbol.

I. The "COIN" (WIN$) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "88 FORTUNES®" Scratch Ticket Game prize of $5, $10, $15, $20, $25, $50, $88, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25, $50, $88, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "88 FORTUNES®" Scratch Ticket Game prize of $5,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "88 FORTUNES®" 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 "88 FORTUNES®" 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 "88 FORTUNES®" Scratch Ticket Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2199. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2199 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $5 | 708,000 | 10.00 |
| $10 | 377,600 | 18.75 |
| $15 | 236,000 | 30.00 |
| $20 | 94,400 | 75.00 |
| $25 | 141,600 | 50.00 |
| $50 | 70,800 | 100.00 |
| $88 | 13,275 | 533.33 |
| $100 | 17,700 | 400.00 |
| $500 | 1,770 | 4,000.00 |
| $5,000 | 15 | 472,000.00 |
| $100,000 | 4 | 1,770,000.00 |

*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 4.26. 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. 2199 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. 2199, 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-201904555

Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 4, 2019

♦ ♦ ♦

Scratch Ticket Game Number 2202 "JUMBO BUCKS 300X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2202 is "JUMBO BUCKS 300X". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2202 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2202.

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: $10.00, $20.00, $30.00, $50.00, $100, $200, $500, $2,000, $5,000, $30,000, $300,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, JUMBO SYMBOL, 10X SYMBOL and 300X SYMBOL.

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. 2202 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| $10.00 | TEN$ |
| $20.00 | TWY$ |
| $30.00 | TRTY$ |
| $50.00 | FFTY$ |
| $100 | ONHN |
| $200 | TOHN |
| $500 | FVHN |
| $2,000 | TOTH |
| $5,000 | FVTH |
| $30,000 | 30TH |
| $300,000 | 300TH |
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 06 | SIX |
| 07 | SVN |
| 08 | EGT |
| 09 | NIN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWFV |
| 26 | TWSX |
| 27 | TWSV |

| | |
|---|---|
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| 41 | FRON |
| 42 | FRTO |
| 43 | FRTH |
| 44 | FRFR |
| 45 | FRFV |
| 46 | FRSX |
| 47 | FRSV |
| 48 | FRET |
| 49 | FRNI |
| 50 | FFTY |
| 51 | FFON |
| 52 | FFTO |
| 53 | FFTH |
| 54 | FFFR |
| 55 | FFFV |
| 56 | FFSX |
| 57 | FFSV |
| 58 | FFET |
| 59 | FFNI |
| 60 | SXTY |
| 61 | SXON |
| 62 | SXTO |
| 63 | SXTH |
| 64 | SXFR |
| 65 | SXFV |
| 66 | SXSX |
| 67 | SXSV |

| | |
|---|---|
| 68 | SXET |
| 69 | SXNI |
| 70 | SVTY |
| 71 | SVON |
| 72 | SVTO |
| 73 | SVTH |
| 74 | SVFR |
| 75 | SVFV |
| 76 | SVSX |
| 77 | SVSV |
| 78 | SVET |
| 79 | SVNI |
| 80 | ETTY |
| 81 | ETON |
| 82 | ETTO |
| 83 | ETTH |
| 84 | ETFR |
| 85 | ETFV |
| 86 | ETSX |
| 87 | ETSV |
| 88 | ETET |
| 89 | ETNI |
| 90 | NITY |
| JUMBO SYMBOL | WINX5 |
| 10X SYMBOL | WINX10 |
| 300X SYMBOL | WINX300 |

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit 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 14 (fourteen) digit number consisting of the four (4) digit game number (2202), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2202-0000001-001.

H. Pack - A Pack of the "JUMBO BUCKS 300X" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Ticket back of 001 and 050 will both be exposed. The pack inserts will be inserted into each non-voided pack of Tickets including sample packs. The dispenser insert cards are to be placed so that both the bar code and UPC are visible on at least on side of the pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JUMBO BUCKS 300X" Scratch Ticket Game No. 2202.

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 "JUMBO BUCKS 300X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred fifty-six (156) Play Symbols.

BONUS BUCKS PLAY AREA: If the player reveals 2 matching prize amounts in the same BONUS BUCK, the player wins that amount. GAME 1: If the player matches any of YOUR NUMBERS Play Symbols to any of the SERIAL NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "JUMBO" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "300X" Play Symbol, the player wins 300 TIMES the prize for that symbol. GAME 2: If the player matches any of the YOUR NUMBERS Play Symbols to any of the SERIAL NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "JUMBO" Play Symbol, the player wins 5 TIMES the prize for that symbol. Each game is played separately. 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 one hundred fifty-six (156) 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 one hundred fifty-six (156) 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 one hundred fifty-six (156) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred fifty-six (156) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. BONUS BUCKS PLAY AREA: A non-winning Prize Symbol will never match a winning Prize Symbol in the BONUS BUCK play areas, unless restricted by other parameters, play action or prize structure.

D. BONUS BUCKS PLAY AREA: A Ticket may have up to two (2) matching non-winning Prize Symbols in the BONUS BUCK play areas, unless restricted by other parameters, play action or prize structure.

E. GAME 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

F. GAME 1: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

G. GAME 1: No matching SERIAL NUMBERS Play Symbols on a Ticket.

H. GAME 1: Within GAME 1, a non-winning Prize Symbol will never match a winning Prize Symbol, unless restricted by other parameters, play action or prize structure.

I. GAME 1: Within GAME 1, a Ticket may have up to seven (7) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

J. GAME 1: The "JUMBO" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

K. GAME 1: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

L. GAME 1: The "300X" (WINX300) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

M. GAME 2: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

N. GAME 2: No matching SERIAL NUMBERS Play Symbols on a Ticket.

O. GAME 2: Within GAME 2, a non-winning Prize Symbol will never match a winning Prize Symbol, unless restricted by other parameters, play action or prize structure.

P. GAME 2: Within GAME 2, a Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

Q. GAME 2: The "JUMBO" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

R. GAME 2: No win(s) will appear in this game unless there is at least one (1) win in either one (1) of the five (5) BONUS BUCK or GAME 1 play areas on the Ticket front.

2.3 Procedure for Claiming Prizes.

A. To claim a "JUMBO BUCKS 300X" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $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 $30.00, $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 "JUMBO BUCKS 300X" Scratch Ticket Game prize of $2,000, $5,000, $30,000 or $300,000, 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 "JUMBO BUCKS 300X" 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 "JUMBO BUCKS 300X" 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 "JUMBO BUCKS 300X" 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 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2202. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2202 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $10 | 660,000 | 9.09 |
| $20 | 330,000 | 18.18 |
| $30 | 300,000 | 20.00 |
| $50 | 180,000 | 33.33 |
| $100 | 60,000 | 100.00 |
| $200 | 12,000 | 500.00 |
| $500 | 1,750 | 3,428.57 |
| $2,000 | 200 | 30,000.00 |
| $5,000 | 10 | 600,000.00 |
| $30,000 | 8 | 750,000.00 |
| $300,000 | 3 | 2,000,000.00 |

*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 3.89. 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. 2202 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. 2202, 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-201904485
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 25, 2019

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Scratch Ticket Game Number 2207 "JAMES BOND 007™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2207 is "JAMES BOND 007™". The play style is "slots - straight line".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2207 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2207.

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: STAR SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, COIN SYMBOL, JOKER SYMBOL, KEY SYMBOL, CLOVER SYMBOL, RING SYMBOL, MONEYBAG SYMBOL, LADYBUG SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, HEART SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, SOMBRERO SYMBOL, LEMON SYMBOL, BANANA SYMBOL, MELON SYMBOL, APPLE SYMBOL, GRAPE SYMBOL, PALM TREE

SYMBOL, SMILE SYMBOL, ANCHOR SYMBOL, STACK OF CASH SYMBOL, $5.00, $10.00, $20.00, $25.00, $35.00, $50.00, $70.00, $100, $350, $3,500 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2207 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| STAR SYMBOL | STAR |
| HORSESHOE SYMBOL | HRSHOE |
| POT OF GOLD SYMBOL | PTGOLD |
| COIN SYMBOL | COIN |
| JOKER SYMBOL | JOKER |
| KEY SYMBOL | KEY |
| CLOVER SYMBOL | CLOVER |
| RING SYMBOL | RING |
| MONEYBAG SYMBOL | MNBAG |
| LADYBUG SYMBOL | LBUG |
| WISHBONE SYMBOL | BONE |
| CROWN SYMBOL | CROWN |
| HEART SYMBOL | HEART |
| GOLD BAR SYMBOL | BAR |
| BELL SYMBOL | BELL |
| SOMBRERO SYMBOL | SMBRO |
| LEMON SYMBOL | LEMN |
| BANANA SYMBOL | BNNA |
| MELON SYMBOL | MELN |
| APPLE SYMBOL | APPL |
| GRAPE SYMBOL | GRPE |
| PALM TREE SYMBOL | PALM |
| SMILE SYMBOL | SMILE |
| ANCHOR SYMBOL | ANCHR |
| STACK OF CASH SYMBOL | WINX7 |
| $5.00 | FIV$ |
| $10.00 | TEN$ |
| $20.00 | TWY$ |
| $25.00 | TWFV$ |
| $35.00 | TRFV$ |
| $50.00 | FFTY$ |
| $70.00 | SVTY$ |
| $100 | ONHN |
| $350 | TRFF |
| $3,500 | 35HN |
| $100,000 | 100TH |

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2207), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2207-0000001-001.

H. Pack - A Pack of "JAMES BOND 007™" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "JAMES BOND 007™" Scratch Ticket Game No. 2207.

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 "JAMES BOND 007™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty (80) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If the player reveals a "STACK OF CASH" Play Symbol in any GAME, the player wins 7 TIMES the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty (80) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty (80) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty (80) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty (80) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. SLOTS: There will never be three (3) matching Play Symbols in adjacent positions in a column or diagonal, unless otherwise restricted by play style, prize structure or other programming parameters.

D. SLOTS: No matching combinations of Play Symbols in the GAMES in any order on a Ticket, unless otherwise restricted by play style, prize structure or other programming parameters.

E. SLOTS: No more than six (6) matching Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. SLOTS: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. SLOTS: A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. SLOTS: The "STACK OF CASH" (WINX7) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. SLOTS: A winning GAME using one (1) "STACK OF CASH" (WINX7) Play Symbol will include a pair of matching Play Symbols in the same GAME.

J. SLOTS: No more than one (1) "STACK OF CASH" (WINX7) Play Symbol will appear in a GAME.

2.3 Procedure for Claiming Prizes.

A. To claim a "JAMES BOND 007™" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $35.00, $50.00, $70.00, $100 or $350, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $35.00, $50.00, $70.00, $100 or $350 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 "JAMES BOND 007™" Scratch Ticket Game prize of $3,500 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JAMES BOND 007™" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "JAMES BOND 007™" 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 "JAMES BOND 007™" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "JAMES BOND 007™" Scratch Ticket may be entered into one (1) of four (4) promotional drawings for a chance to win a promotional

second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in the Scratch Ticket Game No. 2207. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2207 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $5.00 | 802,400 | 8.82 |
| $10.00 | 637,200 | 11.11 |
| $20.00 | 188,800 | 37.50 |
| $25.00 | 47,200 | 150.00 |
| $35.00 | 47,200 | 150.00 |
| $50.00 | 41,300 | 171.43 |
| $70.00 | 35,400 | 200.00 |
| $100 | 14,750 | 480.00 |
| $350 | 1,770 | 4,000.00 |
| $3,500 | 15 | 472,000.00 |
| $100,000 | 4 | 1,770,000.00 |

*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 3.90. 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. 2207 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2207, 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-201904556
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 4, 2019

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## Public Utility Commission of Texas

Notice of Application to Relinquish Designations as an Eligible Telecommunications Carrier and Resale-Eligible Telecommunications Provider

Notice is given to the public of an application filed by Global Connection Inc. of America (Global Connection) with the Public Utility Commission of Texas (commission) on December 2, 2019, to its relinquish designations as an eligible wireline telecommunications carrier and a resale-eligible telecommunications provider.

Docket Title: Application of Global Connection Inc. of America to Relinquish its Designations as a Resale-Eligible Telecommunications Provider and a Wireline Eligible Telecommunications Carrier, Docket Number 50301.

The Application: Global Connection notified the commission that it seeks to relinquish its eligible wireline telecommunications carrier and resale-eligible telecommunications provider designations in service areas in which customers will have competitive provider or carrier options. The designated wire centers were included in attachment 1 to the application. Global Connection informed the commission that it will no longer provide wireline telecommunications services in the State of Texas. Global Connection stated that it provided written notice, on November 25, 2019, of the discontinuance to customers, which is at least 90 days before the relinquishment.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. 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 50301.

TRD-201904549
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2019

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### Request for Comments on Revised Forms for Rate Filing Packages Used by Investor-Owned Water and Sewer Utilities

The Public Utility Commission of Texas (commission) requests comments on proposed revisions to the application forms used by investor-owned water and sewer electric utilities to request changes in rates regulated by the commission. The proposed forms can be found on the commission's website under "Filings," using Control Number 49704.

Comments on the proposed forms may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the forms are required to be filed. Comments on the forms are due January 6, 2020. Comments should be organized in a manner consistent with the organization of the forms. All comments should refer to Project Number 49704. Questions concerning Project Number 49704 should be directed to Heidi Graham, Infrastructure Division, at (512) 936-7139. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201904536
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: December 3, 2019

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## Teacher Retirement System of Texas

### Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Value of Future Benefits

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this document is not included in the print version of the Texas Register. The document is available in the on-line version of the December 13, 2019, issue of the Texas Register.)*

TRD-20194559
Brian K. Guthrie
Executive Director
Teacher Retirement of Texas
Filed: December 4, 2019

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## Texas Department of Transportation

### Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each state fiscal biennium, up to six design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications (RFQ) and requires the department to publish a notice of such issuance in the *Texas Register.* The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the rules). The enabling legislation, as well as the rules, govern the submission and processing of qualifications statements (QSs), and provide for the issuance of an RFQ that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of an RFQ to design, construct, and potentially maintain Segment 3 of the North Houston Highway Improvement Project (Project) in Harris County, Texas. The Project will consist of non-tolled improvements including: (1) realigning I-45 away from the Pierce Elevated to be parallel with I-10 and I-69 from the existing I-45 interchange with I-10 to the existing I-45 interchange with I-69; (2) the construction of connectors providing access between local downtown streets and I-10, I-45, and I-45 non-tolled managed lanes; (3) depressing and widening I-69 from the SH 288 interchange to I-10; (4) reconstructing the I-69 interchanges with I-45 and I-10; (5) reconstructing I-10 general purpose lanes and adding new non-tolled managed lanes from west of I-45 to east of I-69 through downtown Houston; (6) reconstructing the I-10 interchange with I-45; (7) reconstructing SH 288 from south of I-69 to the I-45 interchange; and (8) reconstructing the SH 288 interchange with I-69.

The Project has an estimated design-build cost of approximately $3.6 billion.

Through this notice, which supersedes and replaces the notice published in the *Texas Register* on December 28, 2018, the department is seeking QSs from teams interested in entering into a design-build

contract and, potentially, a capital maintenance contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract, and potentially, a capital maintenance contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and evaluating the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and potentially, a capital maintenance contract, for the Project.

**RFQ Evaluation Criteria.** QSs will be evaluated by the department for shortlisting purposes using the following general criteria: project qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

**Release of RFQ and Due Date.** The department currently anticipates that the RFQ will be available on December 13, 2019. Copies of the RFQ will be available at the following website:

http://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/nhhip-seg3/rfq.html

QSs will be due by 12:00 p.m. (noon) CST on April 29, 2020, at the address specified in the RFQ.

TRD-201904557
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: December 4, 2019

## 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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