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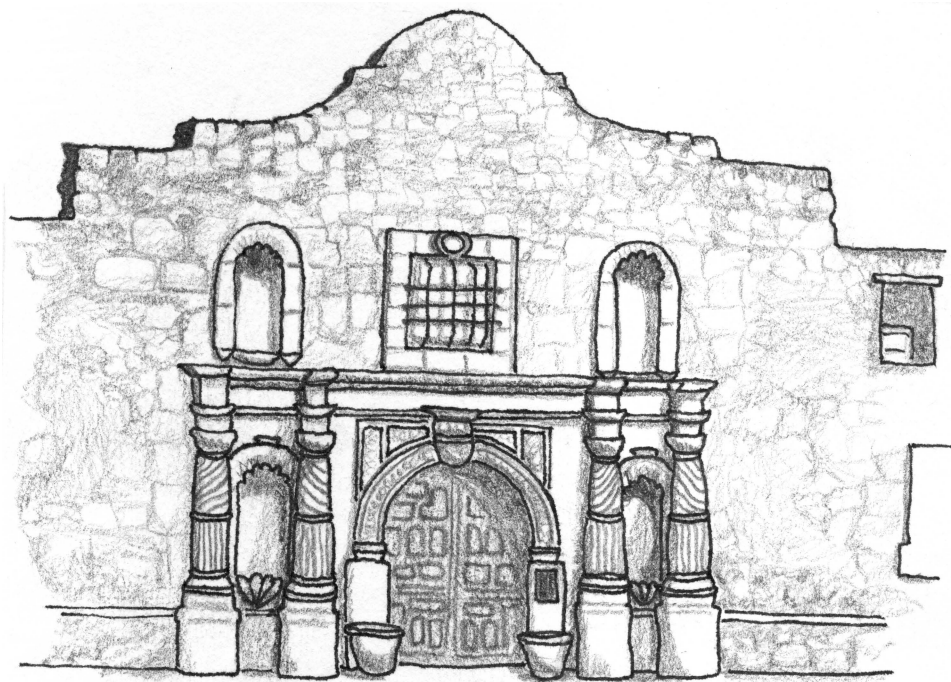
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THE ATTORNEY GENERAL

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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-0325-KP

Requestor:

Mr. Darrell T. Brownlow

Chairman

San Antonio River Authority

100 East Guenther Street

San Antonio, Texas 78204-1401

Re: Whether the San Antonio River Authority may release an inundation easement that has been declared surplus without receiving fair market value (RQ-0325-KP)

Briefs requested by January 20, 2020

RQ-0326-KP

Requestor:

The Honorable Senfronia Thompson

Chair, House Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of Fort Bend Independent School District to maintain a historic cemetery discovered on a school construction site (RQ-0326-KP)

Briefs requested by January 21, 2020

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

TRD-201904997

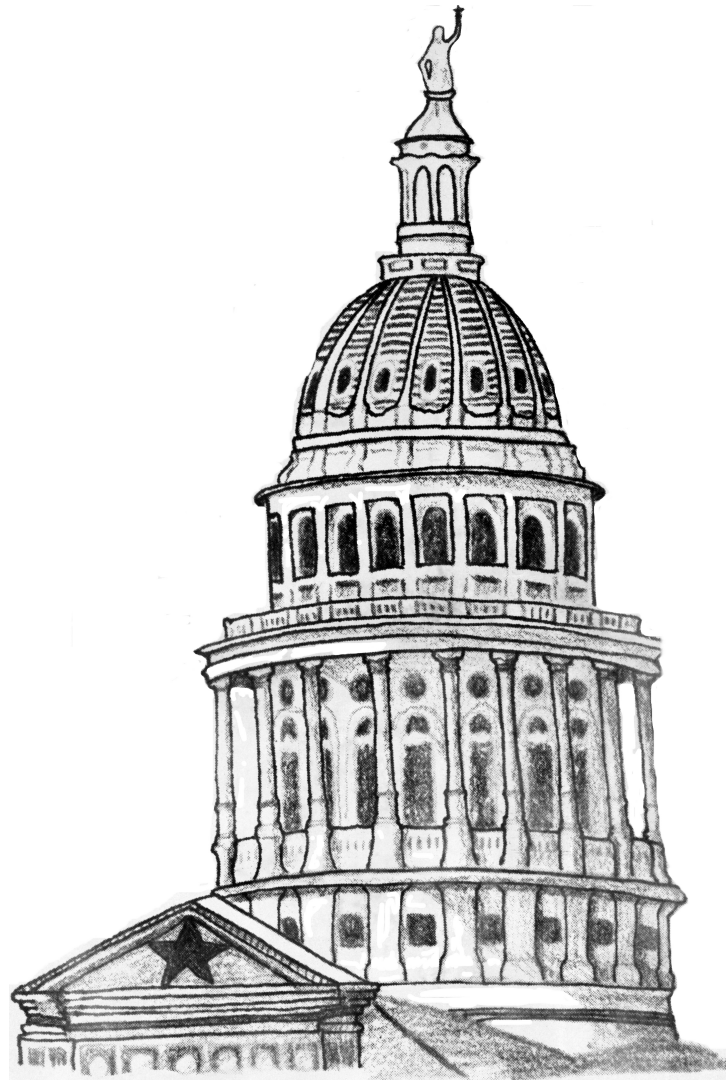
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: December 23, 2019





EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, amendments to §65.81 and §65.82, concerning Disease Detection and Response. The rules are contained in Division 1 of Subchapter B. The emergency adoption establishes a new chronic wasting disease (CWD) Containment Zone (CZ) and Surveillance Zone (SZ) in Val Verde County in response to the recent detection of CWD in a free-ranging white-tailed deer in Val Verde County.

The department's executive director has determined that the nature of CWD and its recent detection in a free-ranging white-tailed deer in Val Verde County pose an immediate danger to white-tailed deer and mule deer, which are species authorized to be regulated by the department, and that the adoption of the amendment on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

The emergency rules will initially be in effect for no longer than 120 days, but may be extended for an additional 60 days. It is the intent of the department to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Although CWD remains under study, it is known to be invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). (There has never been a documented transmission of CWD to a human. The Center

for Disease Control recommends that people not consume venison from CWD-positive animals.) Moreover, a high prevalence of the disease in wild populations correlates with deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could potentially be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping (30 TexReg 3595). (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules established a system of concentric zones within which the movement of live deer under department permits (Deer Breeder Permits, Triple T Permits, Deer Management Permits, Scientific Research Permits, Zoological Collection Permits, Educational Display Permits, and Wildlife Rehabilitation Permits) is restricted, and required deer harvested in specific geographical areas to be presented at check stations to be tested for CWD. In 2015, those rules were modified (41 TexReg 7501) in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional SZs and CZs.

In June of 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD, which was followed by positive test results for white-tailed deer in four additional deer breeding facilities. In response to the index case, the department first adopted emergency rules (40 TexReg 5566) to respond immediately to the threat, then developed interim rules (41 TexReg 815) intended to function through the 2015-2016 hunting season until permanent rules could be implemented. Working closely with the Texas Animal Health Commission (TAHC), the regulated community, and key stakeholders, and with the assistance of the Center for Public Policy Dispute Resolution of the University of Texas School of Law, the department developed comprehensive CWD management rules (Subchapter B, Division 2), adopted in 2016 (41 TexReg 5726). The comprehensive CWD management rules address the movement and consequences of movement of live deer under various department-issued permits (Deer Breeder Permits, Triple T Permits, and Deer Management Permits). Concurrently, the department engaged in rulemaking affecting Subchapter B, Division 1

(41 TexReg 7501) to create additional SZs and CZs affecting portions of Bandera, Medina, and Uvalde counties.

Based on the epidemiological science of CWD and in consultation with TAHC, the department has determined that prompt action to contain CWD in Val Verde County is necessary and that it is prudent to designate new CZ 4 and SZ 4 by emergency rule with fewer than 30 days' notice.

The emergency rules impose restrictions on the movement to, from, and within SZs and CZs of live deer under various permits issued by the department and impose additional restrictions on the movement of dead deer and parts of dead deer from the CZ and SZ (including mandatory check station and documentation requirements).

Within a CZ, no person shall conduct, authorize or cause any activity involving the movement of a susceptible species under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, or R-1. Such prohibited activity includes, but is not limited to, transportation, introduction, removal, authorizing the transportation, introduction or removal of, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a CZ. The rules also prohibit the possession of susceptible species within new deer breeding facilities within a CZ, prohibit the recapture of escaped breeder deer unless authorized under a hold order or herd plan issued by TAHC, and prohibit the transfer of breeder deer to or from a TC 2 or TC 3 deer breeding facility located within a CZ; however, a TC 1 deer breeding facility located in a CZ may release breeder deer to immediately adjoining acreage if the release site and the breeding facility share the same ownership, but may not transfer deer to or from any other location. Additionally, the CZ designation imposes specific carcass movement restrictions on deer and parts of deer harvested within a CZ. The department also intends to establish mandatory check stations within CZ 4.

The department will undertake to inform the public with respect to the emergency rules and permanent rules to follow.

The emergency action is necessary to protect the state's white-tailed deer and mule deer populations, as well as associated industries.

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing.

§65.81. *Containment Zones; Restrictions.*

The areas described in paragraph (1) of this section are CZs.

(1) Containment Zones.

(A) - (C) (No change.)

(D) Containment Zone 4: That portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International boundary at Lake Amistad dam,

thence south along the Rio Grande River to the International Bridge on Spur 239.

(E) [~~(D)~~] Existing CZs may be modified and additional CZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

§65.82. *Surveillance Zones; Restrictions.*

The areas described in paragraph (1) of this section are SZs.

(1) Surveillance Zones.

(A) - (C) (No change.)

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Airforce Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°).

(E) [~~(D)~~] Existing SZs may be modified and additional SZs may be designated as necessary by the executive director as provided in §65.84 of this title (relating to Powers and Duties of the Executive Director).

(2) (No change.)

The agency certifies that legal counsel has reviewed the emergency adoption 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 19, 2019.

TRD-201904931

Todd George

Assistant General Counsel

Texas Parks and Wildlife Department

Effective date: December 19, 2019

Expiration date: April 16, 2020

For further information, please call: (512) 389-4775



PROPOSED RULES

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 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, relating to General Provisions; 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, Hemp 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, af-

ected 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 RuleComments@TexasAgriculture.gov. Comments must be received by TDA no later than Monday, February 10, 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, 121.004, 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 liability 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) "Sampler" means a person or entity authorized by the Department to conduct the sampling and collection of hemp plants.

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

(64) "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.

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

(66) "Storage" means any structure or container, whether temporary or permanent in nature, in which the producer or handler will store hemp. "Storage" does not include containers used to deliver samples.

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

(68) "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.

(69) "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.

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

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

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

(73) "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 of individual or entity, residential or principal business address, telephone number, email address, name and title of each key participant of the entity, 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, handled, or sampled and collected.

§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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SUBCHAPTER B. FEES

4 TAC §§24.5 - 24.7

The proposal is made under §§121.003, 121.004, 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.

§24.5. 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 Sampling, Collection, and Testing Fees.

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

(b) The fee for sampling and collection conducted by the Department shall be \$300.

(c) The license holder shall be responsible for all fees payable to a licensed sampler contracted with the Department to conduct sampling and collection under the Department's hemp program.

(d) The license holder shall be responsible for all fees related to the actual shipment or transport of a hemp sample to the laboratory.

(e) The license holder shall be responsible for all testing fees payable to the laboratory.

§24.7. Other Fees.

(a) The fee for each Department-issued transport manifest shall be in an amount established by the Department.

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

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

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

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SUBCHAPTER C. LICENSING

4 TAC §§24.8 - 24.19

The proposal is made under §§121.003, 121.004, 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.

§24.8. License Application.

(a) Any person who wishes to produce, handle, or sample and collect 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 valid license from the Department shall not produce, handle, or sample and collect 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 for a sampler license has completed an additional Department sampling and collection training course;

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

(6) 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;

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

(8) 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) for a producer or handler license;

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

(B) proof of ownership or control over the location where hemp will be cultivated or stored.

(4) for a sampler license, proof of a contract with the Department to conduct sampling and collection under the Department's hemp program; and

(5) 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 license holder 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 Department 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 the Department, 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.

(e) A person is ineligible for a sampler license unless they have a valid contract with the Department to conduct sampling and collection under the Department's hemp program. A sampler license is invalid upon the termination or expiration of a contract with the Department to conduct sampling and collection under the Department's hemp program.

§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 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 or adds, prior to the anniversary date of its license, 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 licensure 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 transferrable 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 U.S. authority.

(h) Upon request from a representative of the Department, or U.S. 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 U.S. 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 (AMS), or Farm Service Agency (FSA), consistent with USDA requirements:

(1) their license or authorization number, street address, and facility and lot geospatial location, including all transplantation areas, where hemp is and will be produced;

(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; and

(3) any change in the facility or lot geospatial location or amount of acreage dedicated to the production of hemp, and any change in the facility or lot geospatial location or amount of greenhouse indoor square footage dedicated to the production of hemp, including the total acreage or square footage of hemp planted, harvested and if applicable, disposed due to said changes.

(l) Failure to comply with this chapter, or any procedure or process established by the Department related to the cultivation, han-

dling, sampling and collection, processing, testing, storage or transport of hemp, or any request by the Department related to the cultivation, handling, sampling and collection, 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 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 or handle any cannabis that is not hemp.

(b) A license holder shall not produce or handle 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 or handle 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.

(g) A person who holds a producer and sampler license with the Department shall not conduct the sampling and collection of their own hemp product.

§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; and

(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 the 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.

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

(c) 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, sampled and collected, 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 sampling and collection of hemp;

(5) 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

(6) 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 Nonconsumable Hemp Processors.

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

(b) Only a processor registered with the Department shall process nonconsumable 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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Texas Department of Agriculture

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SUBCHAPTER D. INSPECTIONS, SAMPLING AND COLLECTION

4 TAC §§24.20 - 24.23

The proposal is made under §§121.003, 121.004, 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 or its representative 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 fifteen (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 the Department or its representative.

(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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SUBCHAPTER E. TESTING

4 TAC §§24.24 - 24.29

The proposal is made under §§121.003, 121.004, 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 authorizes 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 a State of Texas Laboratory operated by the Department or its representative (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.

(4) The State Laboratory shall be registered with DEA.

§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 standards:

(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 the 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.

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SUBCHAPTER F. DISPOSAL

4 TAC §24.30, §24.31

The proposal is made under §§121.003, 121.004, 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 the Department or its representative.

(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 U.S. 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.

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SUBCHAPTER G. ENFORCEMENT

4 TAC §§24.32 - 24.38

The proposal is made under §§121.003, 121.004, 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.

§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.

(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) made a false statement or provided 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.

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SUBCHAPTER H. TRANSPORTATION

4 TAC §§24.39 - 24.43

The proposal is made under §§121.003, 121.004, 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.

§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 is 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 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 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.

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SUBCHAPTER I. HEMP SEED

4 TAC §§24.44 - 24.48

The proposal is made under §§121.003, 121.004, 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 May 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;
- (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;
- (2) a statement concerning the variety's origin, and the breeding procedure used, 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.

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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, 121.004, 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.

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51

The Texas State Library and Archives Commission (Commission) proposes to revise 13 TAC §2.51, Public Records Fees.

FISCAL NOTE. Mark Smith, State Librarian and Director for the commission, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the amended rules are in effect, the public benefit will be clarity and consistency in charging for copies or reproductions of public records. While the proposed amendments may result in costs incurred by persons requesting copies or reproductions of public records from the commission, the anticipated costs depend on the specific request and cannot be predicted. Furthermore, the costs are consistent with the charges established by the Office of the Attorney General for providing costs of public information under Government Code,

Chapter 552 or authorized by specific statutes related to providing reproductions.

LOCAL EMPLOYMENT IMPACT STATEMENT. There is no effect on the local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Smith has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing these amendments and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. The commission has determined that during the first five years the proposed amendments would be in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or the elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations. Implementation may cause an increase in fees paid to the commission; however, these fees are authorized by Government Code, §552.262 and Government Code, §441.196 and are only charged to persons requesting copies or reproductions of public records. The proposed amendments will not create a new regulation or expand, limit, or repeal an existing regulation. The proposed amendments will not result in an increase or decrease in the number of individuals subject to the rule and will not affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Jelain Chubb, Director, Archives and Information Services, Box 12927, Austin, Texas 78711-2927, or by fax (512) 463-2306, or by email to rules@tsl.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §552.230, which authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied; and, more specifically, Government Code, §441.193, which provides the commission shall adopt rules regarding public access to the archival state records and other historical resources in the pos-

session of the commission; and Government Code, §441.196, which provides the commission may sell copies of state archival records and other historical resources in its possession at a price not exceeding 25 percent above the cost of publishing or producing the copies.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441 and 552.

§2.51. Public Records Fees.

(a) ~~[Charges for Public Records and Library Resource Materials.]~~ The Texas State Library will charge the fees established by the Office of the Attorney General at 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information) and the amounts described in subsection (b) of this section for providing any person the following:

(1) Reproductions ~~[for reproductions]~~ of materials from its collections of library and archival materials that are maintained for public reference; ~~[for copies]~~

(2) Copies of public records of other agencies stored in the State Records Center; ~~[and]~~ ~~[for]~~

(3) Records ~~[records]~~ of the commission, ~~[in accordance with the Office of the Attorney General's rules concerning Cost of Copies of Public Information (1 TAC §§70.1 - 70.12) and as follows:]~~

(b) The Texas State Library will maintain a fee schedule outlining the charges for providing information to any individual and review the schedule annually. In addition to the fees described in subsection (a) of this section and listed on the fee schedule, the library will charge as follows:

(1) Certification of copies is \$5.00 ~~[\$4.00]~~ per instrument, which may include several pages with certification required only once. If certification is requested on each page, the cost is \$5 per instrument if the instrument consists of 5 pages or less or \$1 per page if the instrument consists of more than 5 pages.

(2) If a customer requests items printed from digital information resources, the items will be billed at the page rate for paper copies.

(3) If a customer requests printing of large format materials held in the Texas State Archives, the charge will be assessed at an established ~~[per inch]~~ rate available on the agency fee schedule. ~~[The rate will be reviewed on an annual basis. If material must first be digitized, an additional fee of \$5.50 will be charged.]~~

(4) ~~[Supplies, postage, shipping, and other expenses are billed at actual costs.]~~

~~[(5)]~~ The charge for duplication of non-standard materials from the [The library will arrange for the duplication of photographic images in its] archival collections is the actual [for \$10.00 per image plus] commercial [photo] reproduction cost plus 25% of that cost [costs and postage].

(5) ~~[(6) Digital images of photographic materials held in the Texas State Archives may be provided.]~~ If any materials must first be digitized prior to duplication, an additional fee to cover the cost of digitization, available on the agency fee schedule, [a fee of \$3.00, or \$5.50 for large format items,] will be charged.

(6) ~~[(7)]~~ A customer will be billed for third party access or use charges. Examples of services where use charges might occur include:

(A) Digital information resources available through online services;

(B) Document delivery or interlibrary loan services for providing materials or copies.

(7) [(8)] The minimum charge for any service requiring preparation of an invoice is \$1.00.

(c) [(b) Reproduction of Copyrighted Materials.] Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).

(d) [(e) Labor Charges.] The library will charge for labor, overhead, computer programming, computer resource time, and remote document retrieval, when applicable, as authorized by the rules established by the Office of the Attorney General. [The library will not charge for labor or overhead to retrieve materials or records or research questions. If computer programming is necessary, the library will charge for labor to retrieve digital information in response to an information request.]

(e) [(d) Records of Third Parties.] The library will not provide copies of or access to the records of other agencies housed in the State Records Center without written permission of the agency.

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 20, 2019.

TRD-201904957

Angela Kent

Head of Reference

Texas State Library and Archives Commission

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 463-5426



13 TAC §2.76

The Texas State Library and Archives Commission (commission) proposes new 13 TAC §2.76, Enhanced Contract Monitoring.

Government Code, §2261.253(c) requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

SUMMARY. Proposed §2.76 establishes that the commission will identify contracts that require enhanced contract or performance monitoring by considering several factors, including the total dollar amount of the contract, contract duration, vendor past performance, impacts of contract delay or failure, and the risk of fraud, waste, or abuse. The proposed rule also provides direction for procedures and notification of serious issues or risks that are identified with respect to a monitored contract and states the exceptions for specific contract types that do not require enhanced monitoring.

FISCAL NOTE. Mark Smith, State Librarian and Director for the commission, has determined that for each of the first five years the proposed new section is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the rule, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the proposed new section is in effect, the public benefit will be the enhanced monitoring of com-

mission contracts. There are no anticipated economic costs for persons required to comply with the proposed new section.

LOCAL EMPLOYMENT IMPACT STATEMENT. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The commission has determined that the proposed new section does not require an environmental impact analysis because the proposed new section is not a major environmental rule under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Smith has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the proposed new section and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. The commission has determined that during the first five years the proposed new section would be in effect, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or the elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations. Implementation would not require an increase or decrease in fees paid to the commission. The proposed new section will not create a new regulation or expand, limit, or repeal an existing regulation. The proposed new section will not result in an increase or decrease in the number of individuals subject to the rule and will not affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed new section may be directed to Donna Osborne, Chief Operations and Fiscal Officer, Box 12927, Austin, Texas, 78711-2927, by email at rules@tsl.texas.gov, or by fax (512) 463-3560. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The new section is proposed under Government Code, §2261.253, which requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

CROSS REFERENCE TO STATUTE. Government Code, §2261.253.

§2.76. Enhanced Contract Monitoring.

(a) The commission will identify contracts that require enhanced contract or performance monitoring.

(b) In determining which contracts require enhanced contract or performance monitoring, the commission will consider factors including:

- (1) total dollar amount of contract;
- (2) total contract duration;
- (3) vendor past performance;
- (4) user and business process impacts of contract failure or delay;
- (5) risk of fraud, waste, or abuse;
- (6) special circumstances of the project; and
- (7) scope of goods or services provided.

(c) The director and librarian or designee will provide information on contracts that require enhanced monitoring to the commission. The commission will also be notified immediately of any serious issue or risk that is identified with respect to a contract subject to enhanced contract monitoring.

(d) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

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 20, 2019.

TRD-201904958

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 463-5591



SUBCHAPTER C. GRANT POLICIES

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.111, 2.117, 2.118

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §§2.111, General Selection Criteria, 2.117, Grant Review and Award Process, and 2.118, Decision Making Process.

The proposed amendments respond to directions from the Sunset Commission to adjust grant award criteria and scoring to better disperse grant funding to a wider pool of libraries.

SUMMARY. The proposed amendment to 13 TAC §2.111 adds to the general grant selection criteria consideration of improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or with limited resources.

The proposed amendment to 13 TAC §2.117 provides that a person may not serve as a peer reviewer for a grant category with which the reviewer is associated with an applicant or with an application, or who stands to benefit directly from an application.

The proposed amendment to 13 TAC §2.118 allows the agency to award extra points to libraries that have not received a grant from the agency within a specified time frame to be determined by the agency or with limited resources.

FISCAL NOTE. Mark Smith, State Librarian and Director for the Commission, has determined that for each of the first five years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that the agency may be able to distribute grants to a wider range of Texas libraries.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Smith has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Jennifer Peters, Director of Library Development & Networking, via email

jpeters@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amended section is proposed under Texas Government Code §441.135 that requires the Commission to establish a program of grants and adopt by rule the guidelines for awarding grants, and Texas Government Code §441.136 that allows the Commission to proposed rules necessary to the administration of the program of state grants.

§2.111. *General Selection Criteria.*

(a) Grants shall be awarded based on guidelines that reflect applicable state or federal priorities and mandates. The grant guidelines issued by the agency will specify the timetable, forms, procedures, and any supplemental criteria or requirements applicable to a particular grant for that year. Grant guidelines include the goals describing the purpose of the grant program, applicant eligibility requirements, description of the services to be provided, applicable priorities and restrictions, and the selection criteria and the process to evaluate grant applications and select awards. Selection criteria and requirements are designed to select applications that provide the best overall value to the state.

(b) The general selection criteria include:

- (1) applicant eligibility;
- (2) relevance to goals;
- (3) program impact;
- (4) program scope and quality;
- (5) the cost of proposed service;
- (6) measurability of service impact; and
- (7) compliance with requirements.

(c) The commission may consider additional factors in determining best value, including:

- (1) financial ability to perform services;
- (2) state and regional service needs and priorities;
- (3) improved access for poorly served areas and populations;
- (4) improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or that have limited resources;
- (5) [(4)] ability to continue services after grant period; and
- (6) [(5)] past performance and compliance.

§2.117. *Grant Review and Award Process.*

(a) Agency staff will review each application for the following:

- (1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;
- (2) conformance to the federal and state regulations pertaining to grants;
- (3) inclusion of unallowable costs;
- (4) errors in arithmetic or cost calculations;
- (5) submission of all required forms;
- (6) compliance with submission procedures and deadlines;

and

(7) relevance and appropriateness of the project design and activities to the purpose of the grant program.

(b) Agency staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff will also raise concerns regarding the relevance and appropriateness of the project design and activities to the purpose of the grant program. Staff comments will be sent to the review panel with the applications for consideration by the panel.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses to staff comments will be distributed to the panel.

(1) Applications with significant errors, omissions, or eligibility problems will not be rated. Applications in which the project design and activities are not relevant and appropriate to the purpose of the grant program will be ineligible.

(2) Agency staff will be available to offer technical assistance to reviewers.

(d) Applications will be scored using the following process:

(1) The peer reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposal in relation to the specific requirements of the criteria and will assign a value, depending on the points assigned to each criterion.

(2) No reviewer who is associated with an applicant or who stands to benefit directly from an application will serve on the review panel for the grant program in which the application is submitted for that grant cycle. Any reviewer who is associated with a potential applicant in the respective category must inform the agency and their organization about a potential conflict of interest. [with an application, or who stands to benefit directly from an application will evaluate that application.] Any reviewer who feels unable to evaluate a particular application fairly may choose not to review that application.

(3) Reviewers will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the review panel. The panel members must make their own individual decisions regarding the applications. The panel may discuss applications but the panel's recommendations will be compiled from the individual assessments, not as the result of a collective decision or vote.

(4) Reviewers may not discuss proposals with any applicant before the proposals are reviewed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

(5) Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions. Reviewers who are ineligible to evaluate a given proposal will not participate in the discussion of funding conditions.

(6) Reviewers will submit their evaluation forms to the agency. In order to be counted, the forms must arrive before the specified due date.

§2.118. *Decision Making Process.*

To be considered eligible for funding by the commission, any application must receive a minimum adjusted mean score of more than 60 percent of the maximum points available. However, eligibility does not guarantee funding. The commission may also choose to award extra points to libraries that have not received funding within a specified time frame to be determined by the agency or that have limited resources. To reduce the impact of scores that are exceedingly high or low, or otherwise outside the range of scores from other reviewers, agency staff will tabulate the panel's work using calculations such as an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff will negotiate a reduced grant with the next ranked applicant.

(3) If the panel recommends funding an application that, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The applicant will be informed of this situation prior to presentation to the commission and may negotiate a revision to the application. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting.

(4) If the panel is unable to produce a set of recommendations for funding, the agency staff will use the same evaluation procedures to develop recommendations to the commission.

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

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904955

Jennifer Peters

Director of Library Development and Networking

Texas State Library and Archives Commission

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 463-5456



CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §7.125, relating to local government retention schedule EL (Records of Elections and Voter Registration).

The proposed amendments include revisions necessary to keep the schedule up to date with current laws and administrative rules, and to improve retention of public records.

SUMMARY. The proposed amendments to §7.125(a)(10) revise record series and guidance related to voter registration and election records. Specifically, Senate Bill 5, 85th C.S. Legislative Session, revised the retention period for precinct election records, which set the retention period for many other election and voter registration series. A new series was created

to account for provisions made through House Bill 2910, 86th Legislature.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(10).

The proposed amendment to the introduction of the schedule removes obsolete language and adds applicable language to keep it consistent with other updated local schedules.

The proposed amendment to EL3100-01a, EL3100-01b, EL3100-01c, EL3100-03b, EL3100-03c(1), EL3100-04a(1), EL3100-04c(2), EL3100-06a, EL3100-10a, EL3100-10c, EL3100-10e, EL3100-11a, EL3100-11b(1) and (2), EL3150-06d, and EL3150-06e are affected by the changes made to Election Code, Section 66.058(a) made by Senate Bill 5, which mandates a 22-month retention period.

The proposed amendment to EL3100-01a corrects the legal citation from 84.037 to 84.037a, the subsection that addresses retention.

The proposed amendment to EL3100-10a additionally removes the citation of Section 172.116e, as it was repealed in 2015.

The proposed amendment to EL3100-10c removes the phrase "held in 1986 and subsequent years" and "until the end of the year in which the primary election is held" and replaced it with "for 22 months" to be consistent with how Election Code, Section 172.114 is worded currently.

The proposed amendment to EL3100-11b adjusts the description to be consistent with language in the law in Election Code, Section 211.007.

The proposed amendment to EL3125-03b removes the citation for Section 172.118e, as it was repealed in 2017.

The proposed amendment to EL3125-04 is amended to add candidates to the title and splits the retention period into two sub-series to provide a triggering event for non-elected candidates.

The proposed amendment to EL3150-02a corrects the legal citation from Election Code, Section 13.0035(d) to 13.035(d).

The proposed amendment to EL3150-06g adds a new record series to provide for supporting documentation provided to keep personal information related to voter registration confidential.

The proposed amendment to EL3150-07a revises the retention period from Destroy at option to AV, to remain consistent with other series and schedules.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records and will increase access to those records by the public.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; there-

fore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under the Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and 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.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Megan Carey, Manager, Records Management Assistance, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The amended section is proposed under Texas Government Code §441.158 that requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Texas Government Code §441.160 that allows the commission to revise the schedules.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Texas Government Code §441.158 and §441.160, as well as Texas Senate Bill 5, 85th C.S. Legislative Session, which repealed the six-month retention period for elections involving a non-federal office. No other statutes, articles, or codes are affected by these amendments.

§7.125. *Records Retention Schedules.*

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.

Figure: 13 TAC §7.125(a)(1) (No change.)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, Revised 3rd Edition.

Figure: 13 TAC §7.125(a)(3) (No change.)

(4) Local Schedule DC: Records of District Clerks, Revised 3rd Edition.

Figure: 13 TAC §7.125(a)(4) (No change.)

(5) Local Schedule PS: Records of Public Safety Agencies, Revised 4th Edition.

Figure: 13 TAC §7.125(a)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, 3rd Edition.

Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.

Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, Revised 2nd Edition.

Figure: 13 TAC §7.125(a)(8) (No change.)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, [3rd] 4th Edition.

Figure: 13 TAC §7.125(a)(10)
[Figure: 13 TAC §7.125(a)(10)]

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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 20, 2019.

TRD-201904988

Megan Carey

Government Information Analyst

Texas State Library and Archives Commission

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 463-5449



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes repeal of §61.1011, concerning additional state aid for tax reduction. The proposed repeal is necessary because the authorizing statute expired September 1, 2017.

BACKGROUND INFORMATION AND JUSTIFICATION: Prior to September 1, 2017, Texas Education Code (TEC), §42.2516, allowed school districts to be held harmless for the loss in local tax collections for maintenance and operations caused by the compression of adopted tax rates by one third. Section 61.1011, adopted under former TEC, §42.2516, detailed the calculation of the hold harmless levels for each district, known as revenue targets, as well as how to determine whether hold harmless money was needed or if the state and local revenue received through formula funding was sufficient so that hold harmless money would not have been needed.

Since the provisions of former TEC, §42.2516, which provided for the calculation of additional state aid for tax reduction, expired September 1, 2017, there is no longer a need for a rule detailing the calculations.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation. The proposed repeal would remove from rule provisions relating to the additional state aid for tax reduction allotment, which expired September 1, 2017.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions;

would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing outdated provisions from rule to coincide with changes to the authorizing statute. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

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

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2020, and ends February 10, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 10, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §42.2516, which, prior to September 1, 2017, provided for hold harmless payments for school districts for the loss of local tax collections due to the tax rate compression instituted in 2006. Former TEC, §42.2516(g), authorized the commissioner to adopt rules necessary to implement additional state aid for tax reduction.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §42.2516, as this section existed before the expiration of subsections (b)-(f) on September 1, 2017.

§61.1011. Additional State Aid for Tax Reduction (ASATR).

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 20, 2019.

TRD-201904947

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 475-1497



**SUBCHAPTER FF. COMMISSIONER'S RULES
CONCERNING VETERANS AND MILITARY
DEPENDENTS [COMMISSIONER'S RULES
CONCERNING HIGH SCHOOL DIPLOMAS FOR
CERTAIN VETERANS]
DIVISION 2. MILITARY-CONNECTED
STUDENTS**

19 TAC §61.1063

The Texas Education Agency (TEA) proposes new §61.1063, concerning purple star campus designation. The proposed new rule would implement Senate Bill (SB) 1557, 86th Texas Legislature, 2019, by adopting in rule the criteria campuses must demonstrate in order to qualify to apply for and earn the Purple Star Designation.

BACKGROUND INFORMATION AND JUSTIFICATION: SB 1557, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §33.909, establishing the Purple Star Campus Designation and criteria campuses must demonstrate to earn the designation. TEC, §33.909, specifies that for a campus to earn the designation, the campus must designate a campus-based military liaison, create or maintain a webpage with information specific to military-connected families, establish or maintain a current campus transition program, and offer one of three initiatives: a resolution showing support for military connected students and families, recognition of Month of the Military Child or Military Family Month with relevant events hosted by the campus, or partnership with a school liaison officer to encourage and provide opportunities for active duty military members to volunteer in local schools.

Proposed new 19 TAC Chapter 61, School Districts, Subchapter FF, Commissioner's Rules Concerning Veterans and Military Dependents, Division 2, Military-Connected Students, §61.1063, Purple Star Campus Designation, would address the requirements of TEC, §33.909, as follows.

Proposed new subsection (a) would set forth the purpose of the proposed new rule in accordance with TEC, §33.909.

Proposed new subsection (b) would establish definitions for terms used in the proposed new rule.

Proposed new subsection (c) would delineate the criteria required for campuses who voluntarily apply to earn the designation as a Purple Star Campus.

Proposed new subsection (c)(1) would list the requirements related to designating a campus-based military liaison and the duties of the liaison, including supporting military-connected students and their families, ensuring students are properly identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS), providing supports and services for students and families based on their unique needs and high mobility, and offering professional development opportunities for staff members.

Proposed new subsection (c)(2) would list the requirements related to creating and maintaining a webpage that includes information specific to mitigating barriers as military-connected students transition in and out of Texas public schools.

Proposed new subsection (c)(3) would list the requirements related to a campus transition program led by the military liaison

or student leaders or ambassadors to assist with introductions to the school environment and school processes.

Proposed new subsection (c)(4) would reiterate the statutory requirement to offer at least one of the following initiatives: a resolution showing support for military connected students and families, participation in the Month of the Military Child or Military Family Month, or partner with school liaison officer to provide opportunities for active duty military members to volunteer in the local schools.

Proposed new subsection (d) would specify provisions related to the TEA application and renewal process for Purple Star Campus Designation.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, who apply to earn the designation. Application for the designation is voluntary.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations for campuses who voluntarily apply and to earn the Purple Star Campus Designation. The proposal would lay out the criteria for school districts and open-enrollment charter schools to earn the designation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule's applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montano has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be establishing in rule the criteria and requirements for Purple Star Campus Designation. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have new data reporting for campuses to submit through the agency's application process demonstrating that a campus has met

criteria to be designated as a Purple Star Campus. Application for the designation is voluntary.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would require that a campus-based staff member submit the application to demonstrate that the campus has met the criteria to earn the designation.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2020, and ends February 10, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 10, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §33.909, which establishes the criteria campuses must demonstrate in order to qualify to apply for and earn the Purple Star Campus Designation. TEC, §33.909(e), requires the Texas Education Agency to adopt rules necessary to administer this statute.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.909.

§61.1063. Purple Star Campus Designation.

(a) Purpose. In accordance with Texas Education Code (TEC), §33.909, a campus may qualify to earn the Purple Star Designation if the campus meets criteria demonstrating supports and resources for its military-connected student population.

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

(1) Military-connected student--A student enrolled in a school district or an open-enrollment charter school who is a dependent of a current or former member of the United States military, Texas National Guard, or reserve force in the United States military or who was a dependent of a member of the United States military, Texas National Guard, or reserve force in the United States military who was killed in the line of duty.

(2) School liaison officer--An individual who works for the federal or state government and serves as the primary point of contact for school related matters on military installations. School liaison officers represent, inform, and assist commanding officers and military families with school issues; coordinate with local school systems; and create collaborative partnerships between the military and schools.

(c) Criteria. To qualify to apply for designation as a Purple Star Campus, a campus must meet the following requirements.

(1) Campus-based military liaison. A campus must designate an assigned staff member as a military liaison.

(A) The campus-based military liaison may be:

- (i) a campus counselor;
- (ii) a teacher;

(iii) a campus administrator such as a principal or an assistant principal; or

(iv) another campus staff member who supports highly mobile students.

(B) The campus-based military liaison must support military-connected students and their families by:

(i) serving as the point of contact and working collaboratively between military-connected students and their families and the campus;

(ii) maintaining familiarity with enrollment processes, records transfer, existing community resources, and student supports;

(iii) ensuring military-connected students are identified and properly coded through the Texas Student Data System Public Education Information Management System (TSDS PEIMS);

(iv) determining campus-based supports and services available to military-connected students based on their unique needs, including their high mobility;

(v) assisting in coordinating campus-based programs relevant to military-connected students; and

(vi) attending professional development or training annually to learn and understand topics related to the transition of military-connected students and their families.

(C) The campus-based military liaison must offer professional development opportunities for staff members on issues related to military-connected students. Such issues include, but are not limited to:

(i) military culture;

(ii) deployments and family separations;

(iii) the Interstate Compact on Educational Opportunity for Military Children;

(iv) the TSDS PEIMS military student identifier;

(v) mitigating the effects of high mobility;

(vi) issues that address the physical and mental effects of military service, including post-traumatic stress disorder, traumatic brain injury, and other physical injuries;

(vii) supporting students connected to veterans;

(viii) supporting students with a parent or guardian in the national guard or reserve; and

(ix) supporting students with a parent or guardian who has fallen in the line of duty.

(2) Webpage. A campus must create and maintain an easily accessible webpage that includes the following information for military-connected students and their families.

(A) Relocation. The military-connected student and family support webpage must include information regarding relocation to the campus such as introductions to school environment and processes, enrollment information in extracurricular activities and clubs, tutoring opportunities, student code of conduct, and contact information of pertinent school staff.

(B) Enrollment and registration. The military-connected student and family support webpage must provide information regarding the process and requirements for enrollment, including:

(i) a checklist of required documentation needed to enroll at the campus, which may include information such as copies of student records, transcripts, and residence documentation; and

(ii) eligibility requirements for free public school prekindergarten, as required by TEC, §29.153, for a child of an active duty member of the armed forces, national guard, or reserve component of the armed forces, who is ordered to active duty by proper authority.

(C) Academic planning. The military-connected student and family support webpage must provide a link to information on course sequences, advanced classes available on campus, and information on the Interstate Compact on Educational Opportunity for Military Children, as specified in TEC, Chapter 162.

(D) Counseling and support services. The military-connected student and family support webpage must provide eligibility, application, and referral information offered specifically to military-connected families for counseling and support services on or off a military installation.

(E) Campus-based military liaison. The military-connected student and family support webpage must provide the contact information and duties of the campus's designated military liaison.

(3) Campus transition program.

(A) Introductions to the school environment and school processes by the campus-based military liaison or by campus-based student leaders or ambassadors, if determined appropriate by the campus-based military liaison, must be provided to new military-connected students.

(B) Any student leaders or ambassadors should be supported or sponsored by a campus-based staff member such as:

(i) the campus-based military liaison;

(ii) a campus counselor;

(iii) a teacher;

(iv) a campus administrator such as a principal or an assistant principal; or

(v) another staff member who supports highly mobile students.

(C) Any student leaders or ambassadors should participate in the following activities:

(i) organizing and hosting newcomer social events throughout the school year that give military-connected students and families an opportunity to learn about campus culture, processes, and the community;

(ii) facilitating guided tours of the campus, including the library, nurse's office, counseling office, gym, and cafeteria; and

(iii) accompanying the new student to lunch the first week of school.

(4) Initiatives. A campus must offer at least one of the following initiatives:

(A) a resolution showing support for military-connected students and families;

(B) participation in the Month of the Military Child or Military Family Month; or

(C) partnership with a school liaison officer to encourage and provide opportunities for active duty military members to volunteer in the local schools, speak at a school assembly, or host a school field trip.

(d) Application and renewal.

(1) The campus-based military liaison must complete the Texas Education Agency (TEA) Purple Star Campus Designation application available on the TEA website.

(2) Campus designation criteria must be met and submitted in the application.

(3) The Purple Star Campus Designation will be awarded every school year beginning with the 2020-2021 school year.

(4) Campuses that satisfy the criteria and are awarded the Purple Star Campus Designation are eligible to recertify the designation every two school years.

(5) Campuses not selected for award of the Purple Star Campus Designation will be given an opportunity to appeal the decision of non-selection through an appeal process explained in the non-selection notification.

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 20, 2019.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §§21.4901 - 21.4904

The Texas Department of Insurance proposes new 28 TAC §§21.4901 - 21.4904, concerning disclosures by out-of-network providers. The new rules implement exceptions to balance billing prohibitions in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111, as enacted by Senate Bill 1264, 86th Legislature, Regular Session (2019).

EXPLANATION. The new rules interpret and implement SB 1264, which prohibits balance billing for certain health benefit claims under certain health benefit plans; provides exceptions to balance billing prohibitions; and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators.

SB 1264's balance billing protections generally apply to enrollees of health benefit plans offered by insurers and health maintenance organizations that the department regulates, as well as to the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The changes to law made by the bill apply to health care and medical services or supplies provided on or after January 1, 2020.

The new rules implement the exceptions to balance billing prohibitions found in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. The exceptions to balance billing prohibitions are only applicable in non-emergencies when a health benefit plan enrollee elects to receive covered health care or medical services or supplies from a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or from a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

For many consumers, a surprise balance bill can be financially ruinous, which in turn will likely dissuade some consumers from seeking necessary or advisable medical care in the future. To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The proposed rules are necessary to prevent unscrupulous providers from exploiting the law's narrow exceptions to the balance billing prohibition, which would negatively impact the health and financial welfare of consumers. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice amongst a number of other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

On December 18, 2019, the department adopted 28 TAC §§21.4901 - 21.4904 under emergency rulemaking procedures, to be effective on January 1, 2020. The emergency rules will be withdrawn at the time these proposed rules become effective.

New §21.4901 addresses the purpose and applicability of new Subchapter OO.

New §21.4902 provides that words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in Subchapter OO, unless the context clearly indicates otherwise.

New §21.4903 clarifies that, for purposes of the exceptions to the balance billing prohibitions, an enrollee's election is only valid if the enrollee has a meaningful choice between an in-network provider and an out-of-network provider, the enrollee was not coerced by another provider or their health benefit plan into selecting the out-of-network provider, and the enrollee signs a notice and disclosure statement at least ten business days before

the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out-of-network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out-of-network provider may choose to participate in SB 1264's claim dispute resolution process instead of balance billing an enrollee. New §21.4903 also adopts by reference the notice and disclosure statement that must be filled out by the out-of-network provider and given to the enrollee if the provider chooses to balance bill.

New §21.4904 requires health benefit plans to help their enrollees determine their financial responsibility for a service or supply for which a notice and disclosure statement has been provided, consistent with Insurance Code §1661.002.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Nancy Clark, chief of staff, has determined that during each year of the first five years the proposed new rules are in effect, there will be no fiscal impact on state and local governments as a result of enforcing or administering the proposed rules, other than that imposed by statute. This determination was made because the proposed rules do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rules. The cost analysis in the Public Benefit and Cost Note section of this proposal may apply to providers, such as hospitals, that are owned by state or local governments. Pursuant to Insurance Code §752.003, other state agencies may be involved in enforcing balance billing prohibitions.

Ms. Clark does not anticipate any effect on local employment or the local economy as a result of the proposed rules.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new rules are in effect, Ms. Clark expects that administering the proposed new rules will have the public benefit of implementing Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111, and Chapter 1467, by clarifying when exceptions to balance billing prohibitions are permitted and by prescribing the required notice and disclosure statement an out-of-network provider can optionally provide to an enrollee. The proposed rules will also help protect many health care patients from surprise balance bills, consistent with the intent of SB 1264.

Ms. Clark expects that the proposed new rules may increase the administrative costs associated with the maintenance of signed notice and disclosure statements for providers who choose to balance bill and that are subject to the rules. The cost to maintain these documents is expected to be negligible. Providers already maintain patients' health and billings records, and the new notice and disclosure statement form may be stored with other documents commonly used by providers.

Providers who choose to balance bill and who are subject to the proposed rules may experience increased administrative costs associated with providing the notice and disclosure statement to an enrollee. However, the obligation to provide a notice and disclosure statement to an enrollee is based in statute. Thus, any increased administrative costs are a direct result of SB 1264, not the proposed rules. Furthermore, the obligation to provide the notice and disclosure statement is only applicable if the provider chooses to balance bill an enrollee.

Providers may also experience a financial impact related to final claim reimbursement if prohibited from balance billing. How-

ever, because the balance billing prohibitions were enacted in SB 1264, any financial impact is due to statute and not these proposed rules. Furthermore, providers may choose to balance bill enrollees or participate in SB 1264's dispute resolution process based on their own estimate of final reimbursement.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

The department has determined that the proposed new rules may have an adverse economic effect on small or micro businesses. However, the department does not expect the minimal costs associated with the proposed rules to have a disproportionate economic impact on small or micro businesses. The department has determined that the proposed new rules will not have an adverse economic impact on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. The department estimates that the proposed new rules have the potential to affect thousands of hospitals, other health facilities, individual physicians, surgical assistants, and other health providers that qualify as small or micro businesses, but only if the provider chooses to balance bill and is subject to the proposed rules. There are at least 43,000 licensed physicians in Texas, and the Comptroller estimates that about 14,000 may be small employers. The Comptroller also estimates that there may be about 30,000 ambulatory health care service employers, 500 medical and diagnostic laboratories, and 160 hospitals that are small employers.

The department considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal's objectives:

(1) The department considered not proposing the new rules, but ultimately rejected this option in order to ensure SB 1264's balance billing protections are properly implemented for the protection of consumers. The new rules are necessary to prevent unscrupulous providers from exploiting the law's narrow exceptions to the balance billing prohibition, which would cause consumer harm. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice amongst a number of other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider. To ensure SB 1264's balance billing protections are properly implemented for the protection of consumers, the department has rejected this option.

(2) The department also considered exempting small or micro businesses from the requirements of the rule, but ultimately rejected this option for the same reasons outlined above. Additionally, exempting small or micro business from the proposed rules would result in enrollees receiving the notice and disclosure statement in some instances and not others, resulting in even greater confusion and potential harm for those SB 1264 is intended to protect.

(3) Finally, the department also considered imposing lesser requirements on small or micro businesses, but ultimately rejected this option for the same reasons outlined above. Imposing lesser requirements on small or micro businesses would come at the expense of the enrollees SB 1264 was intended to protect. Furthermore, having different sets of requirements for providers based on their status as a small or micro business would cause confusion for the enrollees, the agencies enforcing these rules, and the providers themselves.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. Insurance Code §752.003 and §1467.003 provide that Government Code §2001.0045 does not apply to a rule proposed and adopted under those sections. Because these rules are proposed under Insurance Code §752.003 and §1467.003, these rules are not subject to Government Code §2001.0045. Nevertheless, even if §2001.0045 was applicable, the department is not required to repeal or amend another rule because the proposed rules are necessary to implement SB 1264 and to protect the health and financial welfare of the residents of this state, as previously explained.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed rules are in effect the proposed rule:

- will not create a government program;
- will not require the creation of new employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on February 10, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2819 at 1:00 p.m. central time, on February 4, 2020, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The department requests that parties who plan to speak at the hearing send their written comments (or a summary of their testimony) to ChiefClerk@tdi.texas.gov by noon January 28, to facilitate a meaningful discussion.

STATUTORY AUTHORITY. The department proposes new §§21.4901 - 21.4904 under Insurance Code §§36.001, 752.003(c), and 1467.003.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

Insurance Code §752.003(c) authorizes the Commissioner to adopt rules as necessary to implement balance billing prohibitions and exceptions to those prohibitions outlined in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111.

Insurance Code §1467.003 provides that the Commissioner may adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

CROSS-REFERENCE TO STATUTE. The proposed new §§21.4901 - 21.4904 implement §§752.003, 1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111; and Insurance Code Chapter 1467.

§21.4901. Purpose and Applicability.

(a) The purpose of this subchapter is to interpret and implement Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111; and Insurance Code Chapter 1467.

(b) Section 21.4903 of this title is only applicable to a covered non-emergency health care or medical service or supply provided by:

(1) a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(2) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

§21.4902. Definitions.

Words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in this subchapter, unless the context clearly indicates otherwise.

§21.4903. Out-of-Network Notice and Disclosure Requirements.

(a) For purposes of this section a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health care plan, as specified in Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(b) An out-of-network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out-of-network provider knowing that the provider is out-of-network and the enrollee may be financially responsible for a balance bill. For purposes of this subsection, an enrollee elects to obtain a service or supply only if:

(1) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out-of-network provider. No meaningful choice exists if an out-of-network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(2) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a non-refundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(3) the out-of-network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in subsection (c) of this section.

(c) If an out-of-network provider elects to balance bill an enrollee, rather than participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title, the out-of-network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subsection (e) of this section prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form.

(d) Each out-of-network provider must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is signed.

(e) The department adopts by reference Form AH025 as the notice and disclosure statement to be used under this section. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a stand-alone document and not incorporated into any other document. The form is available from the department by accessing its website at www.tdi.texas.gov/forms.

(f) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this section is not eligible to participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title.

§21.4904. Health Benefit Plan Issuer and Administrator Responsibility.

Consistent with Insurance Code §1661.002, a health benefit plan issuer or administrator must assist an enrollee with evaluating the enrollee's financial responsibility for a health care or medical service or supply based on the information in the notice and disclosure statement provided to the enrollee under §21.4903 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 December 20, 2019.

TRD-201904963

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 676-6584



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §305.64 and the repeal of §305.149.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements. This rulemaking would correct a typographical error in §305.64 (Transfer of Permits). Additionally, this rulemaking would repeal §305.149 (Time Limitation for Construction of Commercial Hazardous Waste Management Units), because the statutory authority for this rule was repealed.

As part of this rulemaking, the commission is proposing revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, various non-substantive changes are proposed to update references or correct grammar. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

§305.64, *Transfer of Permits*

The commission proposes to amend §305.64(c) to remove a misplaced space between 'transfer' and 'or' in the word "transferor," which made the language unclear.

§305.149, *Time Limitation for Construction of Commercial Hazardous Waste Management Units*

The commission proposes the repeal of §305.149. The statutory basis for this section, THSC, §361.0232, was repealed.

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 to provide consistency with state law and improve readability.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be coordination with state law and improved readability. The proposed repeal of §305.149 is necessary because the state law that authorized the regulation was repealed.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking 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, or limit an existing regulation; however, it does repeal a regulation that is no longer required by state law. This proposed repeal may 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 proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §305.64 is procedural in nature; and the proposed repeal of §305.149 is necessary because THSC, §361.0232 was repealed. Neither of these changes is specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, the proposed rulemaking would correct a typographical error to ensure there is no confusion regarding the rule language and repeal obsolete rule requirements.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule

is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Water Code and THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed rulemaking affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 6, 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 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 2019-085-335-WS. The comment period closes on February 11, 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 Jarita Sepulvado, Industrial and Hazardous Waste Permits Section, (512) 239-4413.

SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.64

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§305.64. *Transfer of Permits.*

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

- (1) the name and address of the transferee;
- (2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the ap-

proved transfer. This section is not intended to relieve a transferor [~~transfer or~~] of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Prior to the executive director issuing the permit modification transferring the permit, the new owner or operator must provide proof of financial assurance in compliance with Chapter 37, Subchapter P of this title. Upon demonstration to the executive director of compliance with Chapter 37 of this title (relating to Financial Assurance), the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

- (1) the permittee no longer owns the permitted facilities;
- (2) the permittee is about to abandon or cease operation of the facilities;
- (3) the permittee has abandoned or ceased operating the facilities; and
- (4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

- (1) the permittee no longer owns or controls the permitted facilities;
- (2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;
- (3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

(k) For standard permits, changes in the ownership or operational control of a facility may be made as a Class 1 modification to the standard permit with prior approval from the executive director in accordance with §305.69(k) 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 December 20, 2019.

TRD-201904972

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 239-6812



SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

30 TAC §305.149

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024,

which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed repeal implements THSC, Chapter 361.

§305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units.

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 20, 2019.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 239-6812



SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §305.541

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §305.541, concerning Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System (TPDES) Permits.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill (HB) 2771 (86th Texas Legislature, 2019) requires the TCEQ to submit a delegation request by September 1, 2021, to seek authority from the United States Environmental Protection Agency (EPA) to issue federal permits for discharges of produced water, hydrostatic test water, and gas plant effluent into water in the state resulting from certain oil and gas activities under the National Pollutant Discharge Elimination System (NPDES) program. Additionally, HB 2771 transfers permitting authority for these discharges from the Railroad Commission of Texas (RRC) to the TCEQ upon delegation of authority for these discharges from EPA to the TCEQ.

This rulemaking is one of several steps necessary to implement HB 2771. The proposed rulemaking would amend §305.541 to adopt by reference the EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 Code of Federal Regulations (CFR) Parts 435 and 437).

Section Discussion

§305.541, Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System (TPDES) Permits

The commission proposes an amendment to §305.541(a) to improve readability and to adopt by reference the current federal regulations in 40 CFR Parts 435 and 437, but noting that the term "produced wastewater" will be used in place of the term "produced water" in the federal regulations, in order to distinguish between the federal definition of "produced water" and the

commission jurisdiction under Texas Water Code, §26.131. The proposed rulemaking would ensure that these federal effluent limitation guidelines are adopted in state regulations, which is necessary prior to seeking NPDES delegation authority from the EPA to issue permits for discharges of produced water, hydrostatic test water, and gas plant effluent from oil and gas facilities.

EPA promulgated the Oil and Gas Extraction Effluent Guidelines and Standards (40 CFR Part 435) in 1979, and amended the regulations in 1993, 1996, 2001, and 2016. These regulations establish effluent limitation guidelines using best practicable control technology currently available (BPT), best available technology economically achievable (BAT), and best conventional pollutant control technology (BCT); performance standards for new sources; and pretreatment standards applicable to wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities. These activities take place on land, in coastal areas, and offshore. The Oil and Gas regulations apply to conventional and unconventional oil and gas extraction, with the exception of coalbed methane.

EPA promulgated the Centralized Waste Treatment (CWT) Effluent Guidelines and Standards (40 CFR Part 437) in 2000 and amended the rule in 2003. These regulations establish effluent limitation guidelines using BPT, BAT, and BCT; performance standards for new sources; and pretreatment standards applicable to CWT facilities. CWT facilities treat or recover metal-bearing, oily, and organic wastes, wastewater, or used material received from off-site. The CWT industry handles wastewater treatment residuals and industrial process by-products that come from other industries, including the oil and gas exploration and production industry.

The commission proposes §305.541(b) to define "produced water" as that term is used in Texas Water Code, §26.131.

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 proposed rulemaking addresses changes required to begin implementation of HB 2771. The proposed rule would adopt by reference certain effluent limitation guidelines in federal regulations. Regulated entities subject to these guidelines are not currently required to obtain discharge authorization from the commission because they are permitted by the EPA and the RRC.

At a future date, if the EPA delegates authority to the commission, then fiscal implications will be anticipated for the agency and the state. On May 17, 2019, the Legislative Budget Board estimated the legislation's impact in their fiscal note for HB 2771.

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.

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 the proposed rulemaking 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 regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as 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. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would adopt by reference the EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental

rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the rulemaking does not exceed a standard set by federal law, rather it adopts by reference EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but is required by HB 2771. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this Draft Regulatory Impact Analysis Determination. 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 performed an assessment of this rule in accordance with Texas Government Code, §2007.043. This rulemaking would adopt by reference the EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). This rule would not constitute either a statutory nor a constitutional taking of private real property. This rulemaking would impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

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 rule 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 rule includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring 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 rule includes policies for discharges of wastewater from oil and gas exploration and production.

The proposed rulemaking is consistent with the above goals and policies by requiring wastewater discharges from oil and gas exploration and production facilities to comply with federal effluent limitation guidelines to protect water resources.

Promulgation and enforcement of the rule would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies and the rule would not create or have a direct or significant adverse effect on any CNRAs.

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 February 4, 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 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 2019-118-305-OW. The comment period closes on February 11, 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 Laurie Fleet, Water Quality Division, at (512) 239-5445.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The proposed amendment implements House Bill 2771 (86th Texas Legislature, 2019).

§305.541. *Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System (TPDES) Permits.*

(a) Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, the following federal regulations are adopted by reference, as amended:

(1) 40 Code of Federal Regulations (CFR) Parts 400 - 402, 404 - 434, 436, 438 - 440, 443, 446 - 448, and 451 - 471 [~~400 - 471, except 40 CFR Part 403~~], which are in effect as of the date of the Texas

Pollutant Discharge Elimination System (TPDES) program authorization; [~~as amended, and 40 CFR Parts~~]

(2) 40 CFR Part 435 (which is in effect as of the date of the TPDES program authorization for discharges subject to this part), except where 40 CFR Part 435 uses the term "produced water" the commission shall instead use the term "produced wastewater";

(3) 40 CFR Part 437 (Federal Register, Volume 68, December 22, 2003); [~~Volume 65, December 22, 2000;~~]

(4) 40 CFR Part 441 (Federal Register, Volume 82, June 14, 2017);

(5) 40 CFR Part 442 (Federal Register, Volume 65, August 14, 2000); [~~5~~]

(6) 40 CFR Part 444 (Federal Register, Volume 65, January 27, 2000); [~~5~~]

(7) 40 CFR Part 445 (Federal Register, Volume 65, January 19, 2000); [~~5~~]

(8) 40 CFR Part 449 (Federal Register, Volume 77, May 16, 2012); [~~5~~] and

(9) 40 CFR Part 450 (Federal Register, Volume 79, March 6, 2014) [~~as amended, are adopted by reference~~].

(b) For the purposes of the commission's implementation of Texas Water Code, §26.131, "produced water" is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435.

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 20, 2019.

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Texas Commission on Environmental Quality

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31, 335.43, 335.63, 335.69, 335.71, 335.76, 335.78, 335.91, 335.112, 335.152, 335.251, 335.261, 335.262, 335.331, 335.501, 335.504, 335.590, and 335.602; and new §335.281.

Background and Summary of the Factual Basis for the Proposed Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking

process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization of revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990; July 23, 1990; October 21, 1991; December 4, 1992; June 27, 1994; November 26, 1997; October 18, 1999; September 11, 2000; June 14, 2005 (parts of Clusters III - X); March 5, 2009 (parts of Clusters XI - XV); May 7, 2012 (parts of Clusters IX and XV - XVIII); November 3, 2014 (parts of Clusters XIX - XXI); and December 21, 2015 (parts of Clusters XX - XXIII).

The commission proposes in this rulemaking certain parts of RCRA Rule Clusters XXIV, XXV, and XXVII that implement revisions to the federal hazardous waste program which were made by EPA between April 8, 2015 and November 30, 2018. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Although not necessary to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. Establishing equivalency with federal regulations will enable Texas to operate all delegated aspects of the federal hazardous waste program in lieu of the EPA.

Vacatur of Comparable Fuels and Gasification Rule

In the April 8, 2015, issue of the *Federal Register* (80 FR 18777), the EPA implemented vacaturs, ordered by the United States Court of Appeals for the District of Columbia Circuit on June 27, 2014, of regulations associated with the comparable fuels exclusion and the gasification exclusion. The vacatur eliminated the exclusions and reinstated the regulatory status in effect prior to their adoption with respect to the materials subject to this rule.

Coal Combustion Residual Co-Disposal Rule

In the April 17, 2015, issue of the *Federal Register* (80 FR 21302), the EPA codified a list of wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are not subject to hazardous waste regulations when co-disposed with coal combustion residuals.

Imports and Exports of Hazardous Waste Rule

In the November 28, 2016, issue of the *Federal Register* (81 FR 85696), the EPA amended existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA made these changes to provide greater protection to human health and the environment by: 1) making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development; 2) enabling electronic submittal to EPA of all export and

import-related documents (e.g., export notices, export annual reports); and 3) enabling electronic validation of consent in the Automated Export System for export shipments subject to RCRA export consent requirements prior to exit. The import and export regulations were promulgated under the Hazardous Waste and Solid Waste Amendments of 1984 which are administered by the EPA and are not delegable to states.

The Imports and Exports of Hazardous Waste Rule repealed 40 Code of Federal Regulations (CFR) Part 262, Subparts E and F (Exports of Hazardous Waste; and Imports of Hazardous Waste), which contained 40 CFR §§262.50 - 262.58 and §262.60 (Applicability; Definitions; General requirements; Notification of intent to export; Special manifest requirements; Exception reports; Annual reports; Recordkeeping; International agreements; and Imports of hazardous waste). Further information on the removal of sections and integration of all import and export requirements into 40 CFR Part 262, Subpart H (Transboundary Movements of Hazardous Waste for Recovery or Disposal), can be found in the Section by Section Discussion of this preamble for individual sections impacted by these revisions.

Safe Management of Recalled Airbags Rule

In the November 30, 2018, issue of the *Federal Register* (83 FR 61552), the EPA conditionally exempted the collection of airbag waste from hazardous waste requirements. EPA concluded that the conditional exemption would facilitate dealerships, salvage yards, and others' ability to conduct more expedited removal of defective and recalled airbag inflators and would facilitate safer and environmentally sound disposal. The conditions for exemption mirror the requirements for management of recalled airbags established by the United States Department of Transportation for the recalled airbags.

Promulgation of House Bill 1953

Additionally, the commission proposes this rulemaking to partially implement House Bill (HB) 1953, 86th Texas Legislature, 2019. HB 1953 amended Texas Health and Safety Code (THSC), §361.003 (Definitions) and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities), and added THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste). These statutory enactments created a new conditional exclusion from the definition of solid waste and from regulations for the management of municipal and industrial solid waste for owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis or gasification. The conditional exclusion is dependent upon two factors: 1) the facility owner or operator demonstrating that the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for beneficial use; and 2) that solid waste generated from converting the materials is disposed at an authorized solid waste management facility. The implementation of HB 1953 in Chapter 335 would only be applicable to material that would be classified as nonhazardous industrial solid waste if discarded because the commission intends to implement the exclusion enacted by HB 1953 applicable to municipal solid waste in a future rulemaking.

All proposed new rules and rule changes are discussed further in the Section by Section Discussion portion of this preamble.

As part of this rulemaking the commission is proposing revisions to 30 TAC Chapter 305, Consolidated Permits, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking, various stylistic, non-substantive changes are being proposed to update rule language to current Texas Register style and format requirements. These changes are generally non-substantive and not specifically discussed in the Section by Section Discussion portion of this preamble.

§335.1, Definitions

The commission proposes §335.1(7) to add the definition of "AES filing compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would add the definition of "AES filing compliance date" that is consistent with the definition of "AES filing compliance date" in 40 CFR §260.10 (Definitions). EPA established December 31, 2017, as the AES filing compliance date in the August 29, 2017, issue of the *Federal Register* (82 FR 41015).

The commission proposes §335.1(8) to add the definition of "Airbag waste" to conform to the federal regulations promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552). Specifically, this amendment would add the definition of "Airbag waste" that is consistent with the definition of "Airbag waste" in 40 CFR §260.10.

The commission proposes §335.1(9) to add the definition of "Airbag waste collection facility" to conform to federal regulations promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552). Specifically, this amendment would add the definition of "Airbag waste collection facility" that is consistent with the definition of "Airbag waste collection facility" in 40 CFR §260.10.

The commission proposes §335.1(10) to add the definition of "Airbag waste handler" to conform to federal regulations promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552). Specifically, this amendment would add a definition of "Airbag waste handler" that is consistent with the definition of "Airbag waste handler" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the additional definitions.

The commission proposes to delete existing §335.1(32) to remove the definition of "Consignee" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "Consignee" consistent with the repeal of 40 CFR §262.51 and the definition of "Consignee."

The commission proposes §335.1(53) to add the definition of "Electronic import-export reporting compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would add the definition of "Electronic import-export reporting compliance date" that is consistent with the definition of "Electronic import-export reporting compliance date" in 40 CFR §260.10.

The commission proposes to delete existing §335.1(66) to remove the definition of "Gasification" to conform to federal regulations promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777). Specifically, this amendment would remove the definition of "Gasification" consistent with the removal of the definition from 40 CFR §260.10.

The commission proposes §335.1(70) to add the definition of "Gasification." This amendment would implement HB 1953 by adding the definition of "Gasification" consistent with the definition of "Gasification" under THSC, §361.003 (Definitions).

The commission proposes §335.1(71) to add the definition of "Gasification facility." This amendment would implement HB 1953 by adding a new definition of "Gasification facility" consistent with the definition of "Gasification facility" under THSC, §361.003.

The commission proposes to amend renumbered §335.1(84) to revise the definition of "Incinerator" to establish in proposed §335.1(84)(B) that incinerators are not a "Gasification facility" or "Pyrolysis facility" managing "Recoverable feedstock" consistent with the "Gasification facility" and "Pyrolysis facility" definitions enacted by HB 1953 under THSC, §361.003.

The commission proposes to amend renumbered §335.1(106) to revise the definition of "Manifest" to conform with the proposed title revision for §335.10.

The commission proposes §335.1(130) to add the definition of "Post-use polymers." This amendment implements HB 1953 for the purposes of material that would be classified as non-hazardous industrial solid waste if discarded. The commission would accomplish this by adding a definition of "Post-use polymers" consistent with the conditional exclusion under THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and the definition of "Post-use polymers" under THSC, §361.003.

The commission proposes to delete existing §335.1(128) to remove the definition of "Primary exporter" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "Primary exporter" consistent with the repeal of 40 CFR §262.51 and the definition of "Primary exporter."

The commission proposes §335.1(136) to add the definition of "Pyrolysis." This amendment would implement HB 1953 by adding a definition of "Pyrolysis" consistent with the definition of "Pyrolysis" under THSC, §361.003.

The commission proposes §335.1(137) to add the definition of "Pyrolysis facility." This amendment would implement HB 1953 by adding a new definition of "Pyrolysis facility" consistent with the definition of "Pyrolysis facility" under THSC, §361.003.

The commission proposes to delete existing §335.1(132) to remove the definition of "Receiving country" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "Receiving country" consistent with the repeal of 40 CFR §262.51 and the definition of "Receiving country."

The commission proposes §335.1(139) to add the definition of "Recognized trader" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would add a definition of "Recognized trader" that is consistent with the definition of "Recognized trader" in 40 CFR §260.10.

The commission proposes §335.1(140) to add the definition of "Recoverable feedstock." This amendment would implement HB 1953 by adding a definition of "Recoverable feedstock" consis-

tent with the definition of "Recoverable feedstock" under THSC, §361.003.

The commission proposes to amend renumbered §335.1(154)(A)(iv) of the definition of "Solid waste." This amendment proposes to adopt by reference revisions promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777) and November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Vacatur of the Comparable Fuels and Gasification Rule and Imports and Exports of Hazardous Waste Rule, respectively. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §261.4(a) and §261.39 (Exclusions; and Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling). Additionally, the adoption by reference of §261.4(a)(16) and §261.38 were removed.

The commission proposes to further amend renumbered §335.1(154)(A)(iv) to adopt by reference revisions promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule revisions. The commission proposes to accomplish the adoption of these revisions by removing the references for 40 CFR §261.4(a)(16) and §261.38, and subclauses (I) - (VIII), consistent with the removal of these sections and language from federal regulations.

The commission proposes §335.1(154)(A)(v) to implement the new conditional exclusion from the definition of "Solid waste" enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment would implement the statutory changes by creating a new exception from the definition of "Solid waste" for post-use polymers and recovered feedstocks processed through pyrolysis or gasification at a "Pyrolysis facility" or "Gasification facility," as those terms are defined in proposed §335.1, and are converted into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission proposes to amend renumbered §335.1(154)(D) to revise the citations for Table 1 to Figure: 30 TAC §335.1(154)(D)(iv) to be consistent with the renumbering of the paragraphs in §335.1. Furthermore, Table 1 is proposed to be revised to remove the inappropriate digit after the clause in the abbreviated citations within the column headings.

Additionally, the commission proposes to amend §335.1(154)(I) to implement the new conditional exclusion enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment would implement the statutory changes by adding facility operators to the persons that are required by §335.1(154)(I) to provide appropriate documentation demonstrating that they meet the terms of an exclusion or exemption from the definition of "Solid waste" or from waste regulations. Specifically, this amendment would implement THSC, §361.119 which exempts facility owners and operators, that convert nonhazardous recyclable materials through "Pyrolysis" or "Gasification", as those terms are defined in §335.1, from regulation under THSC, §361.119 upon demonstration that the primary function of the facility is to convert the materials into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission proposes to delete existing §335.1(162) to remove the definition of "Transit country" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "Transit country" consistent with the repeal of 40 CFR §262.51 and the definition of "Transit country."

The commission proposes to delete existing §335.1(171) to remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" consistent with the repeal of 40 CFR §262.51. The definition of "EPA Acknowledgment of Consent (AOC)" in 40 CFR §262.81 (Definitions) is adopted by reference as published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) in §335.76 (Additional Requirements Applicable to International Shipments).

The commission proposes to amend renumbered §335.1(186)(C) to revise the definition of "User of the electronic manifest system" to conform with the proposed title revision for §335.10.

§335.2, *Permit Required*

The commission proposes to amend §335.2(g) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR §261.4(e) and (f). Specifically, the EPA amended existing regulations to add 40 CFR §261.4(e)(4), which placed a mass limit of 25 kilograms (kg) on imported or exported treatability study samples for eligibility with exemptions from hazardous waste regulations.

§335.10, *Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste*

The commission proposes to amend §335.10 to revise the section title by removing the words "and Primary Exporters of Hazardous Waste." The proposed title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste).

The commission proposes to amend §335.10(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by removing the references to 40 CFR §§262.54, 262.55, and 262.60, which were repealed in this federal rulemaking; adding the reference for 40 CFR Part 262, Subpart H; and amending the *Federal Register* citation for the Appendix to 40 CFR Part 262. Additionally, the commission proposes to amend §335.10(a)(1) to remove the reference to "primary exporters."

The commission also proposes to amend §335.10(c) to remove the exceptions for 40 CFR §262.54 and §262.55, which is proposed to be removed from §335.10(a).

§335.11, *Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste*

The commission proposes to amend §335.11(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §263.20 (The manifest system), and the Appendix to 40 CFR Part 262.

The commission proposes to further amend §335.11(a) to remove the exceptions for §335.10(d) and (e), which apply solely to shipments of Class 1 waste, and to revise the citation for §335.10 to conform with the proposed title revision for §335.10.

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission proposes to amend §335.12(a) and (b) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §264.71 (Use of manifest system); §265.71 (Use of manifest system); and the Appendix to 40 CFR Part 262.

The commission proposes to further amend §335.12(a) to revise the citation for

§335.10 to conform with the proposed title revision for §335.10.

§335.13, Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission proposes to amend §335.13 to revise the section title by removing "and Primary Exporters of Hazardous Waste." The proposed title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262.

The commission proposes §335.13(a). Proposed §335.13(a) contains the language in existing §335.13(m), which is proposed for deletion. Proposed subsection (a) clarifies that generators that generate less than 100 kg of hazardous or Class 1 waste, or less than the quantities of acutely hazardous waste listed in §335.78 (Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) are not subject to the requirements of §335.13. The commission proposes to re-letter subsequent subsections accordingly.

The commission proposes to amend re-lettered §335.13(b) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies.

The commission proposes to delete existing §335.13(b), to remove the requirement for exporters of hazardous or Class 1 waste to complete a Waste Shipment Summary.

The commission proposes to delete existing §335.13(c). The Foreign Waste Shipment Summary requirement is no longer needed since the changes associated with the Imports and Exports of Hazardous Waste Rule allow for improved tracking of hazardous waste imports and exports.

The commission proposes to amend re-lettered §335.13(c) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies; the requirement for the Foreign Waste Shipment Summary, and the document identification "(F1);" the reference to "in-state/out-of-state primary exporter;" and the last sentence, "Conditionally exempt small quantity gen-

erators shipping municipal hazardous waste are not subject to the requirements of this subsection."

The commission proposes to delete existing §335.13(e) to remove the graphic representation illustrating generator, waste type, shipment type, and report method because it is no longer needed.

The commission proposes to delete existing §335.13(h) to remove the reference for "primary exporter/importer."

The commission proposes to amend re-lettered §335.13(f) to remove the references to "primary exporter," revise the citation for §335.10 to conform with the proposed title revision for §335.10, and to replace the phrase "a minimum of" with "at least."

The commission proposes to amend re-lettered §335.13(h) to remove the references to "primary exporter."

The commission proposes to delete existing §335.13(n) to remove the references to "primary exporters;" 40 CFR §262.51; 40 CFR §262.56; and the annual report requirement contained within 40 CFR §262.56.

The commission proposes to amend re-lettered §335.13(j) to remove the references to "primary exporters;" 40 CFR Part 262, Subpart A; 40 CFR §262.51; and 40 CFR §262.58(a)(1); and to clarify that any person who exports or imports hazardous waste is subject to requirements in 40 CFR §262.12 and 40 CFR Part 262, Subpart H, which are proposed to be adopted by reference in §335.76(a).

§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission proposes to amend §335.24(c)(1) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.24(c)(1) to be consistent with the language in revised 40 CFR §261.6(a)(3)(i), which clarifies that exports and imports of recyclable industrial ethyl alcohol are subject to the requirements of revised 40 CFR Part 262, Subpart H; and to move the language in existing §335.24(c)(1)(B) to the of §335.24(c)(1). The commission further proposes to delete current §335.24(c)(1)(A), which contains references to 40 CFR §§262.53, 262.55, 262.56, and 262.57; and 40 CFR Part 262, Subpart E, which have been repealed and reserved in the federal revisions.

The commission proposes to amend §335.24(c)(3) to adopt by reference revisions promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule. The commission proposes to accomplish the adoption of these revisions by adding a dated *Federal Register* citation for 40 CFR §261.4(a)(12). Specifically, 40 CFR §261.4(a)(12)(i) was revised.

The commission proposes to amend §335.24(g) to revise the citations for §335.10 and §335.13 to conform with the proposed title revisions for §335.10, and §335.13.

The commission proposes to amend §335.24(o) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of

these revisions by revising the language in §335.24(o) to be consistent with the language in revised 40 CFR §261.6(a)(5), which clarifies that hazardous waste that is exported or imported for recovery is subject to 40 CFR Part 262, Subpart H.

§335.31, *Incorporation of References*

The commission proposes to amend §335.31 to adopt by reference the revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Import and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the *Federal Register* citation for 40 CFR §260.11 (Incorporation by reference). The change revised the list of guidance materials available for purchase from the Organization for Economic Co-operation and Development.

§335.43, *Permit Required*

The commission proposes to amend §335.43(a) and (b) to replace the reference to the predecessor agency, Texas Natural Resource Conservation Commission, with the current agency, Texas Commission on Environmental Quality.

§335.63, *EPA Identification Numbers*

The commission proposes §335.63(c) to incorporate the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. Proposed §335.63(c) would require all "Recognized traders" in Texas, as defined in proposed §335.1(139), to receive an EPA identification number prior to arranging for imports or exports of hazardous wastes. The proposed language is consistent with revised 40 CFR §262.12(d).

§335.69, *Accumulation Time*

The commission proposes to amend §335.69(m) to revise the citation for §335.10 to conform with the proposed title revision for §335.10.

§335.71, *Biennial Reporting*

The commission proposes to amend §335.71 to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding the publication date to the *Federal Register* citation for 40 CFR §262.41.

§335.76, *Additional Requirements Applicable to International Shipments*

The commission proposes to amend §335.76(a) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by clarifying that all transboundary movements of hazardous waste are subject to 40 CFR Part 262, Subpart H and §262.12 (EPA identification numbers).

The commission proposes to amend §335.76(b) to clarify that imports of industrial solid waste are subject to Chapter 335. The commission proposes to further amend §335.76(b) to delete §335.76(b)(1) - (5), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these paragraphs are no longer needed.

The commission proposes to amend §335.76(c) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by clarifying that hazardous waste exporters are subject to a separate annual report requirement contained in 40 CFR §262.83(g). The proposed language is consistent with revised 40 CFR §262.41(b). The commission proposes to further amend §335.76(c) to delete §335.76(c)(1) - (3), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these paragraphs are no longer needed.

The commission proposes to delete §335.76(d) - (h), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these subsections are no longer needed.

§335.78, *Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators*

The commission proposes to amend §335.78(c)(1) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding a publication date to the *Federal Register* citation for 40 CFR §261.4(c) - (f). Specifically, 40 CFR §261.4(d) and (e) were revised.

The commission proposes §335.78(g)(3)(H). Proposed §335.78(g)(3)(H) adopts the language from 40 CFR §262.14(a)(5)(xi) (Conditions for exemption for a very small quantity generator), which as a condition for exemption requires that hazardous waste airbags generated by a conditionally exempt small quantity generator (less than 100 kg of hazardous wastes generated per calendar month) disposed of offsite, must be sent to an airbag waste collection facility or designated facility subject to the requirements of 40 CFR §261.4(j), which are contained within proposed new §335.281 (Airbag Waste).

§335.91, *Scope*

The commission proposes to amend §335.91(e) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.91(e) to be consistent with the language in revised 40 CFR §263.10(d) (Scope), which clarifies that transporters of hazardous waste for export or import are subject to 40 CFR Part 262, Subpart H.

§335.112, *Standards*

The commission proposes to amend §335.112(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR Part 265, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §265.12 (Required notices) and §265.71 were revised.

§335.152, *Standards*

The commission proposes to amend §335.152(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR Part 264, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §264.12 and §264.71 were revised.

§335.251, *Applicability and Requirements*

The commission proposes to amend §335.251(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 266, Subpart G (Spent Lead-Acid Batteries Being Reclaimed).

The commission proposes to delete existing §335.251(c) and proposes §335.251(c) - (g) to adopt revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule.

§335.261, *Universal Waste Rule*

The commission proposes to amend §335.261(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 273 (Standards for Universal Waste Management). Specifically, 40 CFR §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 (Exports; Tracking universal waste shipments; Exports; Exports; Tracking universal waste shipments; and Imports) were revised.

The commission proposes to amend §335.261(b) to make conformational changes associated with the adoption of revised 40 CFR Part 273. These include adding §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 to the list of sections to which the changes within §335.261(b) do not apply. These sections are excluded from these changes because they are associated with the federal import and export of hazardous waste regulations. States are not allowed to replace federal or international references or terms with state references or terms. The commission further proposes to amend §335.261(b) to remove existing paragraphs (23), (24), (33), and (34), and renumber the remaining paragraphs, accordingly. These paragraphs contain references to 40 CFR §§262.53, 262.56, and 262.57, and 40 CFR Part 262, Subpart E, which were removed and reserved in the federal revisions; and replace federal citations for exports of hazardous waste with state citations, which is prohibited.

§335.262, *Standards for Management of Paint and Paint-Related Wastes*

The commission proposes to amend §335.262(b) to revise language to include non-pigmented paint wastes in universal waste regulations.

§335.281, *Airbag Waste*

The commission proposes new §335.281 to adopt the exemption promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552) associated with the Safe Management of Recalled Airbags rule. The commission proposes to accomplish the adoption of this rule by including the language of new 40 CFR §261.4(j) in proposed new §335.281.

§335.331, *Failure to Make Payment or Report*

The commission proposes to delete §335.331(c), which subjected operators to a daily civil penalty for submitting late reports, and re-letter the remaining subsection accordingly.

§335.501, *Purpose, Scope, and Applicability*

The commission proposes to amend §335.501 to correct a citation to 30 TAC §330.3 (Definitions).

§335.504, *Hazardous Waste Determination*

The commission proposes to amend §335.504(1) to incorporate changes associated with the Vacatur of Comparable Fuels and Gasification, Coal Combustion Residual Co-Disposal, and Imports and Exports of Hazardous Waste Rules. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR Part 261, Subparts A and E (General; and Exclusions/Exemptions). Specifically, 40 CFR §§261.4, 261.6 (Requirements for recyclable materials), and 261.39 were revised.

§335.590, *Operational and Design Standards*

The commission proposes to amend §335.590(24)(A)(ii) to clarify the components of a composite liner by replacing the reference to a flexible membrane component with a reference to a geomembrane layer component. This correction makes the language consistent with municipal solid waste standards in §330.331(e)(1) (Design Criteria).

§335.602, *Standards*

The commission proposes to amend §335.602(a)(4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding the *Federal Register* citation for 40 CFR Part 267, Subpart E (Recordkeeping, Reporting, and Notifying). Specifically, 40 CFR §267.71 (Use of the manifest system) was revised.

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 that are required to be consistent with solid and hazardous waste requirements within RCRA and recent changes to state law due to HB 1953.

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, federal law, and regulations of the EPA.

Local Employment Impact Statement

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

Rural Community Impact Statement

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

Small Business and Micro-Business Assessment

The agency is not aware of any adverse fiscal implications 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. Often small businesses are conditionally exempt from many of RCRA regulations because they are not known to generate significant volumes of hazardous waste.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create nor expand an existing regulation. However, the proposed rulemaking contains the proposed deletion of the existing requirements for affected materials to be managed as solid wastes and the solid waste regulation for pyrolysis and gasification activities, as well as the federal gasification and comparable fuels exclusions. This proposal may decrease the number of individuals subject to that provision's 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 proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because it is not anticipated to adversely effect 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 since the proposed rulemaking implements requirements already imposed on the regulated community under 42 United States Code (USC), §6926(g). Likewise, there will be no adverse effect in a material way on 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 from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community will benefit from the greater flexibility and reduced compliance burden.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking proposes some requirements that are more stringent than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission is proposing rules that are required to maintain authorization of the state hazardous waste program.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by specific sections of the Texas Water Code and the Texas Health and Safety Code that are 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 the proposed rulemaking and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to maintain state's authorization to implement RCRA hazardous waste program by adopting state hazardous waste rules that are equivalent to the federal regulations and to implement the requirements of HB 1953. The proposed rulemaking substantially advances these stated purposes by proposing rules that: 1) are equivalent to the federal regulations, 2) incorporate the federal regulations, or 3) implement the requirements of HB 1953.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the proposed rulemaking that propose to adopt rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4), exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(g), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by EPA in order to maintain authorization to administer the program. Therefore, the portions of the proposed rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the proposed rulemaking are not exempt under Texas Government Code, §2007.003(b)(4), or it implements state law, promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because the proposed rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules do not constitute a takings under the Texas Government Code, Chapter 2007 because they would either implement requirements already imposed on the regulated community under 42 USC, §6926(g) or that are less stringent than existing rules.

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. The CMP goals applicable to the proposed rules include protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. CMP policies applicable to the proposed rules include to construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* 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 proposed rules do not create or have a direct or significant adverse effect on

any CNRAs, and because the proposed rules would update and enhance the commission's rules concerning hazardous waste facilities.

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

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments are not expected to have a significant impact on sites subject to the Federal Operating Permits Program under 30 TAC Chapter 122. Facilities which operate under a Federal Operating Permit (FOP) should evaluate the proposed changes to determine if an update to their FOP is necessary.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 6, 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 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 2019-085-335-WS. The comment period closes on February 11, 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 Jarita Sepulvado, Industrial and Hazardous Waste Permits Section, (512) 239-4413.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the

commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; THSC, §361.041, which requires that the commission consider the treatment of post-use polymers and recoverable feedstocks; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

§335.1. *Definitions.*

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "Closed portion" and "Inactive portion.")

(5) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "Natural gas" and "Storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons" and "Underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior

to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq.*).

(6) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(7) AES filing compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register*, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System platform.

(8) Airbag waste--Any hazardous waste airbag modules or hazardous waste airbag inflators.

(9) Airbag waste collection facility--Any facility that receives airbag waste from airbag handlers subject to regulation under §335.281 of this title (relating to Airbag Waste) and accumulates the waste for more than ten days.

(10) Airbag waste handler--Any person, by site, who generates airbag waste that is subject to regulation under this chapter.

(11) [(7)] Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(12) [(8)] Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(13) [(9)] Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(14) [(10)] Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(15) [(11)] Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(16) [(12)] Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(17) [(13)] Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(18) [(14)] 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.

(19) [(15)] Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(20) [(16)] Carbon dioxide stream--Carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(21) [(17)] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(22) [(18)] Cathode ray tube (CRT)--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(23) [(19)] Cathode ray tube (CRT) collector--A person who receives used, intact CRTs for recycling, repair, resale, or donation.

(24) [(20)] Cathode ray tube (CRT) exporter--Any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(25) [(21)] Cathode ray tube (CRT) glass manufacturer--An operation or part of an operation that uses a furnace to manufacture CRT glass.

(26) [(22)] Cathode ray tube (CRT) processing--Conducting all of the following activities:

(A) receiving broken or intact CRTs;

(B) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) sorting or otherwise managing glass removed from CRT monitors.

(27) [(23)] Certification--A statement of professional opinion based upon knowledge and belief.

(28) [(24)] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(29) [(25)] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(30) [(26)] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(31) [(27)] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "Active portion" and "Inactive portion.")

(32) [(28)] Closure--The act of permanently taking a waste management unit or facility out of service.

(33) [(29)] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(34) [(30)] Component--Either the tank or ancillary equipment of a tank system.

(35) [(31)] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

[(32)] Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.]

(36) [(33)] Contained--Hazardous secondary materials held in a unit (including a "Land-based unit" as defined in this section) that meets the following criteria:

(A) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(B) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

(C) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions; and

(D) hazardous secondary materials in units that meet the requirements of 40 Code of Federal Regulations Parts 264 and 265 are presumptively contained.

(37) [(34)] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(38) [(35)] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.112(a)(21) or §335.152(a)(19) of this title (relating to Standards).

(39) [(36)] Contaminant--Includes, but is not limited to, "Solid waste," "Hazardous waste," and "Hazardous waste constituent" as defined in this section; "Pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "Hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(40) [(37)] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(41) [(38)] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(42) [(39)] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(43) [(40)] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association

of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(44) [(41)] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(45) [(42)] Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(46) [(43)] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(47) [(44)] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(48) [(45)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(49) [(46)] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(50) [(47)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(51) [(48)] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "Disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(52) [(49)] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(53) Electronic import-export reporting compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register*, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's waste Import Export Tracking System, or its successor system.

(54) [(50)] Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(55) [(51)] Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(56) [(52)] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of nonhazardous [~~non-hazardous~~] industrial solid waste; and

(B) meets the definition of "Tank," "Tank system," "Container," or "Transport vehicle," as defined in this section; or "Vessel" as defined in 40 CFR §260.10.

(57) [(53)] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

(58) [(54)] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(59) [(55)] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(60) [(56)] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(61) [(57)] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(62) [(58)] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(63) [(59)] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(64) [(60)] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(65) [(61)] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste, or for the management of hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste);

(C) regardless of subparagraph (B) of this paragraph, a "Remediation waste management site," as defined in 40 Code of Federal Regulations §260.10, is not a facility that is subject to §335.167 of this title, but is subject to corrective action requirements if the site is located within such a facility.

(66) [(62)] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(67) [(63)] Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(68) [(64)] Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(69) [(65)] Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(70) Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(71) Gasification facility--A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification.

[(66)] Gasification--For the purpose of complying with 40 Code of Federal Regulations §261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

(72) [(67)] Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(73) [(68)] Groundwater--Water below the land surface in a zone of saturation.

(74) [(69)] Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(75) [(70)] Hazardous secondary material--A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as "Hazardous waste" as defined in this section.

(76) [(71)] Hazardous secondary material generator--Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 Code of Federal Regulations §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(77) [(72)] Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(78) [(73)] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*

(79) [(74)] Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(80) [(75)] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(81) [(76)] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(82) [(77)] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(83) [(78)] Inactive portion--That portion of a facility which is not operated after November 19, 1980. (*See also* "Active portion" and "Closed portion.")

(84) [(79)] Incinerator--

(A) Any enclosed device that:

(i) [(A)] uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) [(B)] meets the definition of "Infrared incinerator" or "Plasma arc incinerator."

(B) Does not include a "Gasification facility" or "Pyrolysis facility," managing "Recoverable feedstock," as defined in this section.

(85) [(80)] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(86) [(81)] Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(87) [(82)] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

- (A) cement kilns;
- (B) lime kilns;
- (C) aggregate kilns;
- (D) phosphate kilns;
- (E) coke ovens;
- (F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

- (I) methane reforming furnaces;
- (J) pulping liquor recovery furnaces;
- (K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for "Hazardous waste" burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(88) [(83)] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include "Hazardous waste" as defined in this section.

(89) [(84)] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(90) [(85)] Inground tank--A device meeting the definition of "Tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(91) [(86)] Injection well--A well into which fluids are injected. (See also "Underground injection.")

(92) [(87)] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(93) [(88)] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(94) [(89)] Intermediate facility--Any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

(95) [(90)] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(96) [(91)] Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(97) [(92)] Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(98) [(93)] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(99) [(94)] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(100) [(95)] Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(101) [(96)] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(102) [(97)] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(103) [(98)] 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.

(104) [(99)] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(105) [(100)] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(106) [(101)] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with the instructions in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]) and the applicable requirements of 40 Code of Federal Regulations Parts 262 - 265.

(107) [(102)] Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the manifest by a registered source.

(108) [(403)] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(109) [(404)] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(110) [(405)] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(111) [(406)] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(112) [(407)] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(113) [(408)] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "Existing tank system.")

(114) [(409)] No free liquids--As used in 40 Code of Federal Regulations §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes.

(115) [(410)] Off-site--Property which cannot be characterized as on-site.

(116) [(411)] Onground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(117) [(412)] 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 he controls and to which the public does not have access, is also considered on-site property.

(118) [(413)] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "Incinerator" and "Thermal processing.")

(119) [(414)] Operator--The person responsible for the overall operation of a facility.

(120) [(415)] Owner--The person who owns a facility or part of a facility.

(121) [(416)] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(122) [(417)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(123) [(418)] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(124) [(419)] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in non-compliance with the requirements of this chapter.

(125) [(420)] Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(126) [(421)] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

- (i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;
- (ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);
- (iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;
- (iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;
- (v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;
- (vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;
- (vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;
- (viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;
- (ix) lubricants--i.e., automotive and industrial lubricants;
- (x) building materials--i.e., liquid asphalt and dust-laying oils;
- (xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and
- (xii) used oils--See definition for "Used oil" in this section.

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

- (i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;
- (ii) animal, microbial, and vegetable fats;
- (iii) food grade oils;
- (iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and
- (v) cosmetics.

(127) [(122)] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for pro-

cessing or storage, and that is not a corrective action management unit or a containment building.

(128) [(123)] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(129) [(124)] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(130) Post-use polymers--Plastic polymers that derive from industrial sources or activities that would be classified as a nonhazardous industrial solid waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.

(131) [(125)] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(132) [(126)] Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(133) [(127)] Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

[(128) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.]

(134) [(129)] Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of "Processing" does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(135) [(130)] Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid na-

ture which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(136) Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere until melted and thermally decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(137) Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

(138) [(131)] Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(139) Recognized trader--A person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(140) Recoverable feedstock--One or more of the following materials, derived from nonhazardous industrial solid waste, other than coal refuse, that has been processed so that it may be used as feedstock in a "Gasification facility" or "Pyrolysis facility" as defined in this section:

(A) post-use polymers; and

(B) material, including municipal solid waste containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c), as amended through February 8, 2016 (81 FR 6742).

[(132) Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).]

(141) [(133)] Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(142) [(134)] Remanufacturing--Processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(143) [(135)] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(144) [(136)] Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and

sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(145) [(137)] Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(146) [(138)] Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(147) [(139)] Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(148) [(140)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(149) [(141)] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(150) [(142)] Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(151) [(143)] Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(152) [(144)] Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(153) [(145)] Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(154) [(146)] Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters

while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities associated with the exploration, development, or production of oil or gas or geothermal resources," as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Texas Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.*, as amended; [ø]

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.40 [§§261.4(a)(1) - (24), (26), and (27), 261.39, and 261.40], as amended through January 13, 2015 (80 FR 1694), §261.4(a)(1) - (15), (17) - (24), (26), and (27), as amended through April 8, 2015 (80 FR 18777), or §261.39, as amended through November 28, 2016 (81 FR 85696), subject to the changes in this clause, by variance, or by non-waste determination granted under §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 [(as amended through June 26, 2014 (79 FR 36220))] and §261.40, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928); or [- For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid waste' in §335.1 of this title (relating to Definitions)";]

{(I)} in the certification statement under 40 CFR §261.38(e)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(e)(10)" is changed to "40 CFR §261.38(e)(10)";]

{(II)} in 40 CFR §261.38(e)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating

to Definitions);" and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)";]

{(III)} in 40 CFR §261.38(e)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";]

{(IV)} in 40 CFR §261.38(e)(5), the reference to "§261.6(e) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";]

{(V)} in 40 CFR §261.38(e)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";]

{(VI)} in 40 CFR §261.38(e)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";]

{(VII)} in 40 CFR §261.38(e)(9), the reference to "§261.2(e)(4) of this chapter" is changed to "§335.1(146)(D)(iv) of this title (relating to Definitions)"; and]

{(VIII)} in 40 CFR §261.38(e)(10), the reference to "implementing authority" is changed to "executive director."]

(v) recoverable feedstocks that are processed through pyrolysis or gasification at a pyrolysis facility or gasification facility, where the primary function of the facility is to convert recoverable feedstocks into materials that have a resale value greater than the cost of processing the recoverable feedstock for subsequent beneficial use and where solid waste generated from converting recoverable feedstock is disposed of at an authorized solid waste management facility.

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated;

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(iv) sham recycling as explained in subparagraph (J) of this paragraph.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(146)(D)(iv)] indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of "Solid waste" provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(146)(D)(iv)] are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(146)(D)(iv)] are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(146)(D)(iv)] are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(146)(D)(iv)] are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(154)(D)(iv)
[Figure: 30 TAC §335.1(146)(D)(iv)]

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In

cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations and facility operators who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

(K) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(L) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(M) Steel slag may not be considered as solid waste if the steel slag is an intended output or result of the use of an electric

arc furnace to make steel, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(155) [(147)] Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

(A) contains one or more of the F001 through F005 solvents listed in 40 Code of Federal Regulations (CFR) §261.31 or the corresponding P- or U-listed solvents found in 40 CFR §261.33;

(B) exhibits a hazardous characteristic found in 40 CFR Part 261, Subpart C, when that characteristic results from a solvent listed in 40 CFR Part 261; and/or

(C) exhibits only the hazardous waste characteristic of ignitability found in 40 CFR §261.21 due to the presence of one or more solvents that are not listed in 40 CFR Part 261. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 CFR §261.4(a)(26) and (b)(18).

(156) [(148)] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(157) [(149)] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(158) [(150)] Staging pile--An accumulation of solid, non-flowing "Remediation waste," as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(159) [(151)] Standard permit--A Resource Conservation and Recovery Act permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion.

(160) [(152)] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(161) [(153)] Sump--Any pit or reservoir that meets the definition of "Tank" in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(162) [(154)] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective ac-

tion management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(163) [(155)] Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(164) [(156)] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(165) [(157)] TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(166) [(158)] Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "Incinerator" and "Open burning.")

(167) [(159)] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(168) [(160)] Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(169) [(161)] Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste or hazardous secondary materials are held during the normal course of transportation.

[(162) Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.]

(170) [(163)] Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(171) [(164)] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(172) [(165)] Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

- (A) whether the waste is amenable to the treatment process;
- (B) what pretreatment (if any) is required;
- (C) the optimal process conditions needed to achieve the desired treatment;
- (D) the efficiency of a treatment process for a specific waste or wastes; or
- (E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumu-

lation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(173) [(166)] Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(174) [(167)] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(175) [(168)] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "Injection well.")

(176) [(169)] Underground tank--A device meeting the definition of "Tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(177) [(170)] Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

[(171) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.]

(178) [(172)] United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(179) [(173)] United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(180) [(174)] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(181) [(175)] Universal waste handler--Has the definition adopted as "Large quantity handler of universal waste" and "Small quantity handler of universal waste" under §335.261 of this title (relating to Universal Waste Rule).

(182) [(176)] Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9.

(183) [(177)] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(184) [(178)] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(185) [(479)] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(186) [(480)] User of the electronic manifest system--A hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(A) is required to use a manifest to comply with:

(i) any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(B) elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the United States Environmental Protection Agency electronic manifest system; or

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(187) [(481)] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq.*, §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of "Tank" or "Tank system" as defined in this section.

(188) [(482)] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(189) [(483)] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(190) [(484)] Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(191) [(485)] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.2. *Permit Required.*

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq.*, that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of reg-

ulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Water Act, §402, as amended through October 4, 1996, if the owner or operator has

a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f), as amended [~~and adopted in the CFR~~] through November 28, 2016 (81 FR 83696) [~~April 4, 2006, as published in the *Federal Register* (71 FR 16862)]~~, which are adopted by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing

permit or site development plan applicable to the facility or a portion of the facility;

- (2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;
- (3) explosives and shock-sensitive materials;
- (4) pyrophorics;
- (5) infectious materials;
- (6) liquid organic peroxides;
- (7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitor-

ing requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

- (1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or
- (2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste].

(a) Except as provided in paragraph (2) of this subsection, no person who generates, transports, processes, stores, or disposes of hazardous waste shall cause, suffer, allow, or permit the shipment of hazardous waste unless he complies with the requirements of paragraph (1) of this subsection, and the manifest requirements in 40 Code of Federal Regulations (CFR) §§262.20 - 262.25, 262.27, and 262.42, ~~[262.54, 262.55, and 262.60 and the Appendix to 40 CFR Part 262,]~~ as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR Part 262, Subpart H, and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696).

(1) In addition, generators and~~[-]~~ owners or operators of treatment, storage, or disposal facilities~~[-]~~ and ~~primary exporters~~ shall include a Texas waste code for each hazardous waste itemized on the manifest.

(2) No manifest is required for a hazardous waste generated by a generator that generates less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small

Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title.

(b) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

(c) Except as provided in subsections (d) and (e) of this section, persons who generate, transport, process, store, or dispose of Class 1 waste shall not cause, suffer, allow, or permit the shipment of Class 1 waste unless the person complies with the manifest requirements listed in subsection (a) of this section, ~~[except for 40 CFR §262.54 and §262.55]~~ with the following changes:

(1) when Class 1 waste is itemized on the manifest, use the Texas Commission on Environmental Quality solid waste registration (SWR) number or the United States Environmental Protection Agency (EPA) identification number to identify the generator, transporter, and receiver; and use the Texas waste code in place of the EPA waste code; and

(2) when both hazardous and Class 1 waste are itemized on the same manifest, use EPA identification numbers to identify the generator, transporter, and receiver; and use the Texas waste codes for each waste itemized on the manifest.

(d) No manifest is required for the shipment of Class 1 waste where the generator is an industrial generator that generates less than the quantity limits of Class 1 waste specified in §335.78 of this title or is a municipal generator that generates less than the quantity limit of Class 1 waste specified in §335.78 of this title.

(e) No manifest is required for the shipment of Class 1 waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations owned by the same person.

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

(a) Except as provided by ~~§335.10(a)(2)~~ ~~§335.10(a)(2), (d), and (e)]~~ of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste ~~[and Primary Exporters of Hazardous Waste]~~), persons who transport hazardous waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) ~~§§263.21, 263.22, and 263.25~~ ~~§§263.20 - 263.22, and §263.25, and the Appendix to 40 CFR Part 262~~, as these sections are amended through February 7, 2014 (79 FR 7518), and ~~40 CFR §263.20 and the Appendix to 40 CFR Part 262, as these are amended through November 28, 2016 (81 FR 85696)~~, as well as the following:

(1) the person must comply with §335.10 of this title; and

(2) in the case of hazardous waste exports, the person must ensure that the shipment conforms to the requirements set forth in the regulations contained in 40 CFR §263.20.

(b) Except as provided by §335.10(d) and (e) of this title, a person who transports Class 1 waste must comply with the requirements of subsection (a) of this section, except those requirements in 40 CFR §263.20(a)(2).

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste ~~[and Primary Exporters of Hazardous Waste]~~), persons who generate, process, store, or dispose of hazardous waste must comply with 40 Code of Federal Regulations (CFR) ~~§264.72 or §265.72, depending on the status of the person, as these sections are amended through February 7, 2014 (79 FR 7518); and 40 CFR §264.71 or §265.71, depending on the status of the person, as these sections are amended through November 28, 2016 (81 FR 85696)~~ ~~§265.71 and §265.72, or 40 CFR §264.71 and §264.72, depending on the status of the person~~, and with the Appendix to 40 CFR Part 262, as ~~[these sections are]~~ amended through November 28, 2016 (81 FR 85696) ~~[February 7, 2014 (79 FR 7518)]~~. The references in §335.112(b)(1) and (10) and §335.152(c)(1) and (10) of this title (relating to Standards) do not apply to this provision.

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class 1 waste must comply with 40 CFR ~~§264.71 and §264.76~~ ~~§§264.71, 264.72, and 264.76, and the Appendix to 40 CFR Part 262~~, as amended through February 7, 2014 (79 FR 7518), and ~~§264.71 and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696)~~, and a manifest or copy of e-Manifest must accompany the shipment which designates that facility to receive the waste.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste].

(a) The requirements of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(b) ~~[(a)]~~ Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary ~~[(S1)]~~ from the manifests.

~~[(b)]~~ Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary ~~(S1)~~ from the manifests.]

~~[(c)]~~ Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary ~~(F1)~~ from the manifests.]

(c) ~~[(d)]~~ The Waste Shipment Summary ~~[(S1) and the Foreign Waste Shipment Summary (F1)]~~ shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator ~~[or in-state/out-of-state primary exporter]~~ must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary ~~[(S1) and/or Foreign Waste Shipment Summary (F1)]~~ only for those months in which shipments are actually made. ~~[Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.]~~

~~[(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.]~~
~~[Figure: 30 TAC §335.13(e)]~~

~~(d) [(f)] A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number.~~

~~(e) [(g)] An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)], that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.~~

~~[(h) A primary exporter/importer is defined as:]~~

~~[(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or]~~

~~[(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.]~~

~~(f) [(i)] The registered/unregistered generator [or primary exporter] shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]) for at least [a minimum of] three years from the date of shipment by the registered/unregistered generator [or primary exporter].~~

~~(g) [(j)] A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.~~

~~(h) [(k)] A registered/unregistered generator [or primary exporter of hazardous waste subject to §335.76(e) of this title (relating to Additional Requirements Applicable to International Shipments)] must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator [or primary exporter] for at least three years from the date the waste was accepted by the initial transporter and must include:~~

~~(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and~~

~~(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.~~

~~(i) [(h)] The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.~~

~~[(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.]~~

~~[(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR) §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations (CFR) §262.56, as amended and adopted through March 18, 2010 (75 FR 12989).]~~

~~(j) [(o)] Any person who exports or imports [Primary exporters of] hazardous waste [as defined in 40 CFR §262.51, or importers of hazardous waste, to or from countries listed in 40 CFR §262.58(a)(1) for recovery.] must comply with 40 CFR §262.12 and 40 CFR Part 262, Subpart H, as adopted by reference under §335.76(a) of this title (relating to Additional Requirements Applicable to International Shipments) [Subparts A and H].~~

~~§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.~~

~~(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) - (l) of this section.~~

~~(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 17 of this title (relating to Tax Relief for Property Used for Environmental Protection); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings).~~

~~(1) recyclable materials used in a manner constituting disposal;~~

~~(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);~~

~~(3) recyclable materials from which precious metals are reclaimed;~~

~~(4) spent lead-acid batteries that are being reclaimed.~~

~~(c) The following recyclable materials are not subject to regulation under Subchapters B - I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities;~~

Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; or Chapter 305 of this title, except as provided in subsections (g) and (h) of this section:

(1) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 Code of Federal Regulations (CFR) Part 262, Subpart H, as amended through November 28, 2016 (81 FR 85696). Transporters transporting a shipment for export may not accept a shipment if they know the shipment does not conform to the United States Environmental Protection Agency (EPA) acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment;

~~{(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986;}~~

~~{(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.55, 262.56(a)(1) - (4) and (6) and (b), and 262.57, as amended through January 8, 2010 (75 FR 1236); export such materials only upon such consent of the receiving country and in conformance with the United States Environmental Protection Agency (EPA) acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, as amended through January 8, 2010 (75 FR 1236); and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;}~~

~~{(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;}~~

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12), as amended through April 8, 2015 (80 FR 18777)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under

40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter and Subchapter D of this chapter, and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title; and

(2) Section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(g) Recyclable materials (excluding those listed in subsections (b)(4), and (c)(1) - (5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste ~~and Primary Exporters of Hazardous Waste~~; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities, respectively), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and

recyclable materials listed in subsections (b)(4) and (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

- (1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;
- (2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;
- (3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
- (4) the potential for the objectionable constituent to degrade into nonharmful constituents;
- (5) the degree to which the objectionable constituent bioaccumulates in ecosystems;
- (6) the plausible types of improper management to which the waste could be subjected;
- (7) the nature and severity of potential damage to the public health and environment;
- (8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and
- (9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

- (1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;
- (2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;
- (3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;
- (4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;
- (5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;
- (6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
- (7) the potential for the objectionable constituent to degrade into harmful constituents;
- (8) the degree to which the objectionable constituent bioaccumulates in ecosystems;
- (9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(12) other relevant factors.

(j) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible nonhazardous materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The closure cost estimate for financial assurance must be submitted with any new notification in accordance with §335.6 within 60 days of the effective date of this rule for existing facilities or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(k) Financial assurance. An owner or operator of a recycling facility that stores nonhazardous combustible recyclable materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(l) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(m) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter, but is regulated under Chapter 324 of this title (relating to Used Oil Standards). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or re-processed.

(n) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted by

reference under §335.152(a)(17) and (18) and §335.112(a)(19) and (20) of this title (relating to Standards).

(o) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H, as amended through November 28, 2016 (81 FR 85696).

{(o) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 CFR §262.58(a)(1), for purpose of recovery; and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290); if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262; or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).}

(p) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter.

§335.31. *Incorporation of References.*

When used in this chapter [Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)], the references contained in 40 Code of Federal Regulations [(CFR)] §260.11 are incorporated by reference as amended through November 28, 2016 (81 FR 85696) [September 8, 2005 (70 FR 53420)].

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 20, 2019.

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Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §335.43

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and haz-

ardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§335.43. *Permit Required.*

(a) Except as provided in §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Commission on Environmental Quality (commission) [Texas Natural Resource Conservation Commission].

(b) Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's [Texas Natural Resource Conservation Commission's] Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the United States Environmental Protection Agency [EPA] imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

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. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.63, 335.69, 335.71, 335.76, 335.78

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), Chapter 361, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

§335.63. *EPA Identification Numbers.*

(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.

(b) A generator must not offer hazardous waste to transporters or to storage, processing or disposal facilities that have not received an EPA identification number.

(c) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the EPA Administrator.

§335.69. *Accumulation Time.*

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (h) and (n) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(D) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days;

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title (relating to Purpose, Scope, and Applicability); and

(C) Section 335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR §261.31 or §261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264, 265, and 267 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) or (f) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title; and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

(A) subsection (a)(2) and (3) of this section;

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title;

(C) all applicable requirements under 40 CFR Part 267, as adopted by reference under §335.601 and §335.602 of this title (relating to Purpose, Scope, and Applicability; and Standards); and

(D) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title; and

(5) the generator complies with the following requirements.

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage,

or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;

(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) Section 335.113 of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]) may accumulate the returned waste on-site in accordance with subsections (a) and (b) of this section or subsections (f) - (h) of this section depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(n) A generator who sends a shipment of Class 1 waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title may accumulate the returned waste on-site. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

§335.71. *Biennial Reporting.*

In addition to annual reporting which is required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), in every even-numbered year facilities subject to the United States Environmental Protection Agency biennial reporting requirements shall submit to the commission information as required by 40 Code of Federal Regulations §262.41, as amended through November 28, 2016 (81 FR 85696). Upon request, this supplemental information shall be prepared in a form provided or approved by the executive director and submitted within the specified timeframe. Activities covered in the report shall be for the previous odd-numbered report year. Facilities subject to the United States Environmental Protection Agency biennial reporting requirements include all large quantity generators of hazardous waste for any month during the previous odd-numbered report year.

§335.76. *Additional Requirements Applicable to International Shipments.*

(a) Transboundary movements of hazardous waste shall comply with 40 Code of Federal Regulations (CFR) §262.12, and 40 CFR Part 262, Subpart H, as amended through November 28, 2016 (81 FR 85696).

(b) Imports of industrial solid waste shall comply with all applicable requirements of this chapter.

(c) Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR §262.83(g), as amended through November 28, 2016 (81 FR 85696), for hazardous waste exporters.

{(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58 as amended through January 8, 2010 (75 FR 1236), a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and

enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.}]

[(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title and §335.14 of this title and Subchapter D of this chapter. Exports of hazardous waste are prohibited unless:}]

[(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) has been provided;}]

[(2) the receiving country has consented to accept the hazardous waste;}]

[(3) a copy of the United States Environmental Protection Agency (EPA) acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));}]

[(4) the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent; and}]

[(5) the primary exporter complies with the manifest requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:}]

[(A) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and}]

[(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.}]

[(c) A primary exporter must submit an exception report to the executive director if:}]

[(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;}]

[(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received; or}]

[(3) the waste was returned to the United States.}]

[(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title and 40 CFR §262.60.}]

[(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.}]

[(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through January 8, 2010 (75 FR 1236).}]

[(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.}]

[(h) Transfrontier shipments of hazardous waste for recovery within countries belonging to the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through January 8, 2010 (75 FR 1236).}]

§335.78. *Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.*

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) - (f), as amended through November 28, 2016 (81 FR 85696), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or

totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title;

(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements);

(6) is universal waste managed under §335.41(j) of this title and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule); or

(7) is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity consistent with 40 CFR §262.213. For purposes of this provision, the phrase "eligible academic entity" shall have the meaning as defined in 40 CFR §262.200.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification).

(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency (EPA) under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;

(E) permitted, licensed, or registered by a state to manage non-municipal ~~nonhazardous~~ ~~[non-hazardous]~~ waste and, if managed in a non-municipal ~~nonhazardous~~ ~~[non-hazardous]~~ waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of

this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial ~~nonhazardous~~ ~~[non-hazardous]~~ waste and, if managed in a non-municipal or industrial ~~nonhazardous~~ ~~[non-hazardous]~~ waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial ~~nonhazardous~~ ~~[non-hazardous]~~ waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; ~~[or]~~

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter; ~~or~~[-]

(H) for airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 40 CFR §261.4(j).

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with ~~nonhazardous~~ ~~[non-hazardous]~~ waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

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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SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

30 TAC §335.91

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.91. Scope.

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

(e) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to all relevant requirements of 40 Code of Federal Regulations (CFR), Part 262, Subpart H, including, but not limited to, 40

CFR §262.83(d) and §262.84(d) for movement documents, as amended through November 28, 2016 (81 FR 85696).

~~{(e) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262; or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste); or subject to the universal waste management standards of 40 CFR Part 273; or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262; Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents}.~~

(f) The regulations in this chapter do not apply to transportation during an explosives or munitions emergency response conducted in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this subchapter apply to military munitions classified as solid waste under 40 CFR §266.202.

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

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC,

§361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified in this section) are adopted by reference as amended [and adopted in the CFR] through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B - General Facility Standards (as amended through November 28, 2016 (81 FR 85696)) [January 8, 2010 (75 FR 1236)];

(2) Subpart C - Preparedness and Prevention;

(3) Subpart D - Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §265.56(d);

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through November 28, 2016 (81 FR 85696)) [February 7, 2014 (79 FR 7518)], except 40 CFR §§265.71, 265.72, and 265.75 - 265.77;

(5) Subpart F - Groundwater Monitoring (as amended through April 4, 2006 (71 FR 16862)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H - Financial Requirements (as amended through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), (b) and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), and (f) - (k), and 265.148 - 265.150;

(8) Subpart I - Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart J - Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(10) Subpart K - Surface Impoundments (as amended through July 14, 2006 (71 FR 40254));

(11) Subpart L - Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §265.253;

(12) Subpart M - Land Treatment (as amended through July 14, 2006 (71 FR 40254)) except, 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N - Landfills (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

(14) Subpart O - Incinerators (as amended through October 12, 2005 (70 FR 59402));

(15) Subpart P - Thermal Treatment (as amended through July 17, 1991 (56 FR 32692));

(16) Subpart Q - Chemical, Physical, and Biological Treatment (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart R - Underground Injection;

(18) Subpart W - Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart AA - Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 4, 2006 (71 FR 16862));

(21) Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(22) Subpart DD - Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(23) Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(24) the following appendices contained in 40 CFR Part 265:

(A) Appendix I - Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix III - EPA Interim Primary Drinking Water Standards;

(C) Appendix IV - Tests for Significance;

(D) Appendix V - Examples of Potentially Incompatible Waste; and

(E) Appendix VI - Compounds With Henry's Law Constant Less Than 0.1 Y/X.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments);

(L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); and

(M) Qualified professional engineer is changed to Texas licensed professional engineer.

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(c) A copy of 40 CFR Part 265 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

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. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.152

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended [~~and adopted in the CFR~~] through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended through November 28, 2016 (81 FR 85696)) [~~January 8, 2010 (75 FR 1236))~~]; in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through November 28, 2016 (81 FR 85696)) [~~February 7, 2014 (79 FR 7518))~~], except 40 CFR §§264.71, 264.72, 264.76, and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended through April 4, 2006 (71 FR 16862)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), (b) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), and (f) - (k), and 264.148 - 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR§264.142(a) and §264.144(a), and §37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I--Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(8) Subpart J--Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart K--Surface Impoundments (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L--Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O--Incinerators (as amended through April 8, 2008 (73 FR 18970));

(14) Subpart S--Special Provisions for Cleanup (as amended through March 18, 2010 (75 FR 12989));

(15) Subpart W--Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(16) Subpart X--Miscellaneous Units (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart AA--Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart DD--Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through August 1, 2005 (70 FR 44150)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix IV--Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V--Examples of Potentially Incompatible Waste;

(D) Appendix VI--Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX--Ground-Water Monitoring List (as amended through June 13, 1997 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Purpose, Scope, and Applicability; Definitions; Site Selection to Protect Groundwater or Surface Water; Unsuitable Site Characteristics; Prohibition of Permit Issuance; and Petitions for Rulemaking). A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(11) Reference to qualified professional engineer is changed to Texas licensed professional engineer.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

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



SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

30 TAC §335.251

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103,

which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.251. *Applicability and Requirements.*

(a) The regulations of this section adopt by reference 40 Code of Federal Regulations (CFR) Part 266, Subpart G as amended through November 28, 2016 (81 FR 85696) [January 8, 2010 (75 FR 12366)]. This section applies to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), [who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country] are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Non-hazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); or Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management General [Management-General] Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities) and 40 CFR §265.13; and

(2) all applicable provisions in Chapters 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, and 305 of this title [Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title;

Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and Chapter 305 of this title].

(c) Persons who export spent batteries for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), except for §335.63 of this title (relating to EPA Identification Numbers); Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), except for §335.91(e) of this title (relating to Scope); Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); or Subchapter O of this chapter (relating to Land Disposal Restrictions), or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title (relating to Hazardous Waste Determination).

(d) Persons who transport spent batteries in the United States to export them for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter; or Subchapter O of this chapter, or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §335.91(e) of this title.

(e) Persons who import spent batteries from a foreign country and store these spent batteries, but are not the claimer, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(f) Persons who import spent batteries from a foreign country and store these spent batteries before reclaiming them, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(g) Persons who import spent batteries from a foreign country and do not store these spent before reclaiming them, and where they will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

{(e) In addition to the regulations in this section, persons who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are subject to the requirements of §335.13 and

§335.76(h) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste; and Additional Requirements Applicable to International Shipments, respectively).]

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



DIVISION 5. UNIVERSAL WASTE RULE

30 TAC §335.261, §335.262

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

§335.261. *Universal Waste Rule.*

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under 30 Texas Administrative Code. Except as provided in subsection (b) of this section, 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended [and adopted in the *Federal Register*] through November 28, 2016 (81 FR 85696) [July 14, 2006 (71 FR 40254)].

(b) 40 CFR Part 273, except 40 CFR §§273.1, 273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70, [~~§273.4~~] is adopted subject to the following changes:[-]

(1) The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality," "the agency," or "the commission" consistent with the organization of the commission as set out in Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) The term "treatment" is changed to "processing."

(4) The term "universal waste" is changed to "universal waste as defined under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(6) In 40 CFR §273.2(a) and (b), references to "40 CFR Part 266, Subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(7) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(1), the reference to "40 CFR §262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR §262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR §261.7(b)(3))" is deleted.

(9) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.4(a), the reference to "§273.9" as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in §335.261(b)(16)(E) of this title (relating to Universal Waste Rule) and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) In 40 CFR §273.5(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(14) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(15) In 40 CFR §273.8(a)(2), the reference to "40 CFR §261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and to "§335.402(5) of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(16) In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.

(A) Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

(B) Generator--Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

(C) Large quantity handler of universal waste--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.

(D) Small quantity handler of universal waste--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

(E) Thermostat--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.

(F) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of this section:

- (i) batteries, as described in 40 CFR §273.2;
- (ii) pesticides, as described in 40 CFR §273.3;
- (iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;
- (iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and
- (v) lamps, as described in 40 CFR §273.5.

(17) In 40 CFR §273.10, the reference to "40 CFR §273.9" is changed to "§335.261(b)(16)(D) of this title (relating to Universal Waste Rule)."

(18) 40 CFR §273.11(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.17; managing specific wastes as provided in 40 CFR §273.13; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(19) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(20) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(21) In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(22) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

[(23) In 40 CFR §273.20(a), the reference to "§§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."]

[(24) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."]

(23) [(25)] In 40 CFR §273.30, the reference to "§273.9" is changed to "§335.261(b)(16)(C) of this title (relating to Universal Waste Rule)."

(24) [(26)] 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(25) [(27)] In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(26) [(28)] In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(27) [(29)] In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(28) [(30)] In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(29) [(31)] In 40 CFR §273.33(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(30) [(32)] In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

[(33) In 40 CFR §273.40(a), the reference to "40 CFR Part 262, Subpart H §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."]

[(34) In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."]

(31) [(35)] In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(32) [(36)] In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(33) [(37)] In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(34) [(38)] In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(16)(A) of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "30 Texas Administrative Code (relating to Environmental Quality)."

(35) [(39)] In 40 CFR §273.60(b), the reference to "40 CFR §261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(36) [(40)] In 40 CFR §273.80(a), the reference to "40 CFR §260.20 and §260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(37) [(41)] In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

(38) [(42)] In 40 CFR §273.81(a), the reference to "40 CFR §260.10" is changed to "§335.1 of this title (relating to Definitions) and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(d) Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

(1) an exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number 6009, based on an eight-hour time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

(2) compliance with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

(3) documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

(4) the executive director approves the crushing system in writing.

§335.262. *Standards for Management of Paint and Paint-Related Waste.*

(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

(b) Paint and paint-related waste is used or unused paint or ~~and~~ paint-related material which is "hazardous waste" as defined under §335.1 of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination). Paint is a pigmented or unpigmented mixture of binder and ~~and which is any mixture of pigment and a~~ suitable liquid which forms a closely adherent coating when spread on a surface ~~or any material which results from painting activities~~.

(c) Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:

(1) Those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261 of this title (relating to Universal Waste Rule): [Title] 40 Code of Federal Regulations (CFR) §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70;

(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

(A) a container that remains closed, except when necessary to add or remove waste;

(B) a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(C) a container that does not meet the requirements of subparagraphs (A) and (B) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraphs (A) and (B) of this paragraph; or

(D) a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

(E) a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes;" and

(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three 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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DIVISION 7. AIRBAG WASTE RULE

30 TAC §335.281

Statutory Authority

The new section is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new section is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed new section implements THSC, Chapter 361.

§335.281. Airbag Waste.

(a) Airbag waste at the airbag waste handler site or during transport to an airbag waste collection facility or a designated facility is not subject to regulation under §335.2 of this title (relating to Permit Required), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter O of this chapter (relating to Land Disposal Restrictions); or Chapter 37 of this title (relating to Financial Assurance), Chapter 39 of this title (relating to Public Notice), Chapter 281 of this title (relating to Applications Processing), or Chapter 305 of this title (relating to Consolidated Permits), provided that:

(1) the airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators for no longer than 180 days;

(2) the airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste-Do Not Reuse";

(3) the airbag waste is sent directly to either:

(A) an airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration; or

(B) a "Designated facility", as defined in §335.1 of this title (relating to Definitions), that is authorized to accept airbag waste;

(4) the transport of the airbag waste complies with all applicable United States Department of Transportation regulations in 49 Code of Federal Regulations Parts 171 - 180 during transit;

(5) the airbag waste handler maintains at the handler facility, for no less than three years, records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules or airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of United States Department of Transportation shipping papers, or electronic confirmations of receipt).

(b) Airbag waste received at an airbag waste collection facility or a designated facility is subject to all hazardous waste regulations, and the operator of the receiving facility is the generator of the airbag waste that must comply with the generator requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), and Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(c) Reuse of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration in vehicles is prohibited and is considered sham recycling as defined under §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

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

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SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.331

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC §361.136, which provides that the commission establish fee rates for the management of industrial solid waste and hazardous municipal waste; and THSC §361.137, which provides the commission the authority to establish fees for an industrial solid waste or hazardous municipal waste permit application.

The proposed amendment implements THSC, Chapter 361.

§335.331. *Failure to [T~~e~~] Make Payment or Report.*

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the Health and Safety Code, §361.137 and §361.252.

(b) Generators and owners or operators of a facility failing to make payment of fees imposed under the Health and Safety Code, Chapter 361, when due, shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

~~[(c) Operators of waste management facilities submitting late reports concerning the management of waste under the Health and Safety Code, §361.136, are subject to a civil penalty of \$100 for each day the violation continues.]~~

(c) ~~[(d)]~~ Any interest or penalties collected by the commission shall be deposited in the appropriate fund.

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 R. WASTE CLASSIFICATION

30 TAC §335.501, §335.504

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

§335.501. *Purpose, Scope, and Applicability.*

Persons who generate industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Wastes that are regulated under Chapter 334, Subchapter K~~[5]~~ of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil) are not subject to the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the agency other than notification of waste generation activities pursuant to §335.6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required). A generator of industrial solid waste or special waste as defined by §330.3 ~~[§330.2]~~ of this title (relating to Definitions) shall refer to Chapter 330 of this title (relating to Municipal Solid Waste) for regulations regarding the disposal of such waste prior to shipment to a municipal landfill. Used oil, as defined and regulated under Chapter 324 of this title (relating to Used Oil), is not subject to the provisions of this subchapter. This subchapter:

(1) provides a procedure for implementation of Texas waste notification system; and

(2) establishes standards for classification of industrial solid waste and municipal hazardous waste managed in Texas.

§335.504. *Hazardous Waste Determination.*

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded or exempted from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A or E, as amended through November 28, 2016 (81 FR 85696) ~~[January 13, 2015 (80 FR 1694), or identified in 40 CFR Part 261, Subpart E, as amended through July 28, 2006 (71 FR 42928)].~~

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 CFR Part 261, Subpart D, as amended through April 13, 2012 (77 FR 22229).

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 18, 2010 (75 FR 12989).

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SUBCHAPTER T. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

30 TAC §335.590

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§335.590. *Operational and Design Standards.*

The following requirements, including those applicable to municipal solid waste facilities, apply to owners and operators of facilities subject to this subchapter:

- (1) §330.121 of this title (relating to General);
- (2) §330.123 of this title (relating to Pre-operation Notice);
- (3) §330.125 of this title (relating to Recordkeeping Requirements), except that the requirements under §330.125(b)(3) of this title concerning recordkeeping for gas monitoring and remediation plans relating to explosive and other gases do not apply, except as determined necessary by the executive director;
- (4) §330.127 of this title (relating to Site Operating Plan);
- (5) §330.129 of this title (relating to Fire Protection);
- (6) §330.131 of this title (relating to Access Control);
- (7) §330.133(a) - (c) of this title (relating to Unloading of Waste);
- (8) §330.137 of this title (relating to Site Sign);

(9) §330.139 of this title (relating to Control of Windblown Waste and Litter);

(10) §330.141 of this title (relating to Easements and Buffer Zones);

(11) §330.143(a) of this title (relating to Landfill Markers and Benchmark);

(12) §330.149 of this title (relating to Odor Management Plan);

(13) §330.153 of this title (relating to Site Access Roads);

(14) §330.155 of this title (relating to Salvaging and Scavenging);

(15) §330.157 of this title (relating to Endangered Species Protection);

(16) §330.159 of this title (relating to Landfill Gas Control) as determined necessary by the executive director;

(17) §330.161 of this title (relating to Oil, Gas, and Water Wells);

(18) §330.163 of this title (relating to Compaction);

(19) §330.165 of this title (relating to Landfill Cover);

(20) §330.167 of this title (relating to Poned Water);

(21) §330.175 of this title (relating to Visual Screening of Deposited Waste);

(22) §330.207 of this title (relating to Contaminated Water Management);

(23) the owner or operator shall have and follow procedures for the suppression and control of dust; and

(24) the owner or operator shall ensure that each commercial industrial nonhazardous waste landfill unit meets the requirements of subparagraphs (A) - (F) of this paragraph.

(A) Design criteria.

(i) Landfill cells shall be designed and constructed in accordance with subclause (I) or (II) of this clause, and shall also be constructed in accordance with subclause (III) of this clause.

(I) a design that ensures that the concentration values for constituents listed in §330.419(a) of this title (relating to Constituents for Detection Monitoring) will not be exceeded in the uppermost aquifer at the point of compliance, as specified by the executive director under clause (iv) of this subparagraph; or

(II) a composite liner, as defined in clause (ii) of this subparagraph, and a leachate collection system that is designed and constructed in accordance with subparagraph (B) of this paragraph; and

(III) unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a landfill cell must be constructed where the base of the containment structure, which includes the sides and bottom of the containment structure, is at least five feet above the uppermost saturated soil unit having a Unified Soil Classification of GW (well-graded gravel), GP (poorly-graded gravel), GM (silty gravel), GC (clayey gravel), SW (well-graded sand), SP (poorly-graded sand), or SM (silty sand), or a hydraulic conductivity greater than 1×10^{-5} cm/sec, unless such saturated soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(ii) For purposes of this section, "composite liner" means a system consisting of two components. The upper component shall consist of a minimum 30-mil (0.75 mm) ~~geomembrane~~ [flexible membrane] liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. ~~Geomembrane~~ [flexible membrane] liner components consisting of high density polyethylene shall be at least 60-mil thick. The ~~geomembrane~~ [flexible membrane] liner component must be installed in direct and uniform contact with the compacted soil component.

(iii) When approving a design that complies with clause (i)(I) of this subparagraph, the executive director may consider at least the following factors:

- (I) the hydrogeologic characteristics of the facility and surrounding land;
- (II) the climatic factors of the area; and
- (III) the volume and physical and chemical characteristics of the leachate.

(iv) For purposes of this paragraph, the point of compliance is defined in §330.3 of this title (relating to Definitions). In determining the point of compliance, the executive director may consider at least the following factors:

- (I) the hydrogeologic characteristics of the facility and surrounding land;
- (II) the volume and physical and chemical characteristics of the leachate;
- (III) the quantity, quality, and direction of flow of groundwater;
- (IV) the proximity and withdrawal rate of the groundwater users;
- (V) the availability of alternative drinking water supplies;
- (VI) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;
- (VII) public health, safety, and welfare effects; and
- (VIII) practicable capability of the owner or operator.

(B) Landfill cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:

- (i) constructed of materials that are chemically resistant to the leachate expected to be generated;
- (ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and
- (iii) designed and operated to function through the scheduled closure and post-closure period of the landfill.

(C) Storm water run-on/run-off facilities such as berms and ditches shall be provided in accordance with §330.63 of this title (relating to Contents of Part III of the Application).

(D) The site shall have a groundwater monitoring system installed that is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action).

(E) The final cover placed over the commercial industrial nonhazardous waste landfill unit shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units That Receive Waste on or after October 9, 1993). The final cover over the aerial fill shall meet the requirements of §330.457 of this title and shall include a flexible membrane component.

(F) Nonhazardous waste may be placed above natural grade in commercial industrial nonhazardous waste landfill units provided the conditions in clauses (i) - (vi) of this subparagraph are met, except as provided in clause (vii) of this subparagraph:

(i) waste placed above grade shall be laterally contained by dikes that are constructed to:

- (I) prevent washout, release, or exposure of waste;
- (II) be physically stable against slope failure, with a minimum safety factor of 1.5;
- (III) prevent washout from hydrostatic and hydrodynamic forces from storms and floods;
- (IV) prevent storm water from reaching the waste;
- (V) minimize release of leachate; and
- (VI) minimize long-term maintenance;

(ii) the liner required in paragraph (22) of this section shall extend to the crest of the dike;

(iii) waste placed against the dike is placed no higher than [~~that~~] three feet below the crest of the dike;

(iv) the slope of the wastes placed in the commercial industrial nonhazardous waste landfill units does not exceed 3% to the center of the unit;

(v) no waste is placed higher than the lowest elevation of the dike crest; and

(vi) a dike certification report is submitted with Attachment 10 of Part III of the permit application. The certification shall be in the following form:

Figure: 30 TAC §335.590(24)(F)(vi) (No change.)

(vii) a commercial industrial nonhazardous waste landfill is not subject to the requirements of clauses (ii) - (v) of this subparagraph provided that the owner or operator submits a demonstration that the standards of clause (i) of this subparagraph can be met without meeting the requirements of clauses (ii) - (v) of this subparagraph, the demonstration is approved in writing by the executive director, and the owner or operator enters the approval into the facility operating record.

(25) Hazardous waste from a conditionally exempt small quantity generator as defined in §335.78(a) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may be accepted for disposal in any commercial industrial nonhazardous waste landfill facility provided the amount of hazardous waste accepted from each conditionally

exempt small quantity generator does not exceed 220 pounds (100 kilograms) a calendar month, and provided the landfill owner or operator is willing to accept the hazardous waste.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 239-6812



SUBCHAPTER U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

30 TAC §335.602

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.602. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 267 (including all appendices to 40 CFR Part 267) are adopted by reference as amended ~~and adopted in the CFR~~ through September 8, 2005 (70 FR 53420) and as further amended and adopted as indicated in each paragraph of this subsection:

- (1) 40 CFR Part 267, Subpart B--General Facility Standards;
- (2) 40 CFR Part 267, Subpart C--Preparedness and Prevention;[-]
- (3) 40 CFR Part 267, Subpart D--Contingency Plan and Emergency Procedures;
- (4) 40 CFR Part 267, Subpart E--Recordkeeping, Reporting, and Notifying (as amended through November 28, 2016 (81 FR 85696));

(5) 40 CFR Part 267, Subpart F--Releases from Solid Waste Management Units;

(6) 40 CFR Part 267, Subpart G--Closure;

(7) 40 CFR Part 267, Subpart I--Use and Management of Containers;

(8) 40 CFR Part 267, Subpart J--Tank Systems;

(9) 40 CFR Part 267, Subpart DD--Containment buildings; and

(10) 40 CFR §267.142, concerning Cost estimate for closure.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) Reference to:

(A) 40 CFR Part 261 is changed to §335.504 of this title (relating to Hazardous Waste Determination);

(B) 40 CFR Part 262 is changed to Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste);[-]

(C) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(D) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(E) 40 CFR Part 264, Subpart S is changed to §335.152(a)(14) of this title;

(F) 40 CFR Part 265 is changed to Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(G) 40 CFR Part 268 is changed to Subchapter O of this chapter (relating to Land Disposal Restrictions);

(H) 40 CFR Part 270, Subpart J is changed to Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units);

(I) 40 CFR §262.34 is changed to §335.69 of this title (relating to Accumulation Time);

(J) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units); and

(K) Reference to "standardized permit" is changed to "standard permit".

(3) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste, respectively), as applicable.

(c) An owner or operator of a unit that treats, stores, or disposes of hazardous waste in tanks, containers, and containment buildings authorized by a standard permit as specified in this section shall establish and maintain financial assurance in accordance with Chapter

37, Subchapter P of this title (relating to Financial Assurance for Hazardous and ~~Nonhazardous~~ [Non-Hazardous] Industrial Solid Waste Facilities).

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 20, 2019.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER B. NATURAL GAS

34 TAC §3.30

The Comptroller of Public Accounts proposes new §3.30, concerning natural gas tax managed audits and determination of overpaid amounts. This section implements House Bill 2256, 86th Legislature, 2019.

In subsection (a), the comptroller defines the terms "managed audit" and "taxpayer." "Managed audit" is defined in the same manner as Tax Code, §201.3021(a) (Managed Audits). "Taxpayer" is any person required by Tax Code, Chapter 201 (Gas Production Tax) to file a producer's or first purchaser's report.

Subsection (b) implements Tax Code, §201.3021 as added by House Bill 2256. This subsection discusses the policies regarding managed audits for the natural gas tax and provides detailed procedures for managed audits.

Subsection (c) implements Tax Code, §201.207. This subsection discusses how taxpayers may use sampling of marketing cost transactions to establish that they have overpaid tax. In order to use sampling, the taxpayer must follow certain requirements, including use of a comptroller-approved sampling method, recording the method used, and making relevant records available for comptroller review. After establishing an overpayment, the taxpayer must amend all relevant reports and may then either use the overpayment as a credit on another natural gas tax return or request a refund. A taxpayer must amend all the relevant reports to allow the comptroller to track the application of refunds and credits to the taxpayer's account.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the num-

ber of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that for each year of the first five years the proposed new rule is in effect, the proposed new rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed new rule would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

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 new section 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 (State Taxation).

The new section implements Tax Code, §201.207 (Determination of Overpaid Amounts) and §201.3021 (Managed Audits).

§3.30. Natural Gas Tax Managed Audits and Determination of Overpaid Amounts.

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

(1) Managed audit--A review and analysis of invoices, checks, accounting records, or other documents or information conducted by a taxpayer to determine a taxpayer's liability for tax under Tax Code, Chapter 201 (Gas Production Tax).

(2) Taxpayer--Any person required to file a report with the comptroller under Tax Code, §201.203 (Producer's Report) or §201.2035 (First Purchaser's Report).

(b) Managed audits. The comptroller may authorize taxpayers that meet certain requirements to perform managed audits.

(1) A taxpayer who wishes to participate in a managed audit must request authorization from the comptroller's office to conduct a managed audit under this section. Authorization will only be granted as part of a written agreement between the taxpayer and the comptroller's office. The agreement must:

(A) be signed by an authorized representative of the comptroller and the taxpayer; and

(B) specify the period to be audited and the procedure to be followed.

(2) In determining whether to authorize a managed audit, the comptroller may consider:

(A) the taxpayer's history of tax compliance, including:

(i) timely filing of reports;

(ii) timely payment of all taxes and fees due to the

state;

(iii) prior audit history;

(iv) delinquency in other taxes;

(v) correction of problems identified in prior audits;
and

(vi) whether a penalty waiver had been denied on prior occasions and the reason for denial;

(B) whether the taxpayer has sufficient time and resources to conduct the audit;

(C) the sufficiency and availability of the taxpayer's tax records;

(D) the taxpayer's ability to pay any liability arising as a result of the audit; and

(E) any other factor the comptroller determines is relevant.

(3) The decision to authorize or not authorize a managed audit rests solely with the comptroller.

(4) A managed audit may be limited to one or more factors affecting a taxpayer's liability for tax under this chapter, including:

(A) gross value of gas produced;

(B) exempt interest;

(C) marketing costs of gas produced;

(D) gas used to power operations at a well or lease; or

(E) tax reimbursement paid by a purchaser to a producer.

(5) Before the audit is finalized, the comptroller may examine records that the comptroller determines are necessary to verify the results.

(6) Unless the audit or information reviewed by the comptroller under this subsection discloses fraud or willful evasion of the tax, the comptroller may not assess a penalty and may waive all or part of the interest that would otherwise accrue on any amount identified to be due in a managed audit. This does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax but that was not remitted to this state.

(7) Except as provided by Tax Code, §111.104(f) (Refunds), a taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit under this section.

(8) This subsection applies to audits initiated on or after September 1, 2019.

(c) Determination of overpaid amounts by sampling marketing cost transactions.

(1) A taxpayer may sample marketing cost transactions provided that the sampling method is approved by the comptroller. The taxpayer must record the method and make available on request by the comptroller the records on which the computation is based.

(2) A taxpayer may obtain a reimbursement of an overpayment identified by sampling under this subsection by amending all relevant reports and:

(A) taking a credit on one or more reports filed under Tax Code, §201.203 or §201.2035; or

(B) filing a claim for refund with the comptroller within the statute of limitations specified by Tax Code, §111.107 (When a Refund or Credit is Permitted) and Chapter 111, Subchapter D (Limitations).

(3) This subsection applies to refund claims filed on or after September 1, 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 December 20, 2019.

TRD-201904946

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 475-2220

◆ ◆ ◆
**CHAPTER 13. UNCLAIMED PROPERTY
REPORTING AND COMPLIANCE**

34 TAC §§13.4 - 13.8, 13.21

The Comptroller of Public Accounts proposes new §13.4 concerning report and delivery of certain personal tangible property, §13.5 concerning additional required information for reported mineral proceeds, §13.6 concerning minimum requirements for a claim, §13.7 concerning identification of claimed property; burden, and §13.8 concerning certain mineral proceeds; supporting documentation required. The comptroller also proposes amendments to §13.21 concerning property report format.

Section 13.4 provides that tangible personal property shall be reported in the manner prescribed by the Comptroller's Unclaimed Property Reporting Instructions. It also requires holders to provide a detailed description of the property to the comptroller and identify whether the property has been contaminated by biohazardous material. Finally, this section provides that the comptroller can determine that the property has insubstantial value and require a holder to destroy or otherwise dispose of the property before delivery to the comptroller.

Section 13.5 provides additional information reporting requirements for holders of mineral proceeds.

Section 13.6 describes the minimum requirements for a claim.

Section 13.7 describes that a person making a claim for unclaimed property has the burden of identifying the property in the possession of the comptroller that is being claimed.

Section 13.8 provides additional documentation requirements for claims involving mineral proceeds reported to the comptroller with an unknown or unidentified owner.

The amendment to §13.21 allows the comptroller to prescribe the electronic file format to be used to file a property report by publishing in the Comptroller's Unclaimed Property Reporting Instructions.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules and amendment are in effect, the rules: 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.

Mr. Currah also has determined that the proposed new rules and amended rule would have no fiscal impact on small businesses or rural communities. The proposed new rules and amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules and amended rule would benefit the public by clearly defining existing policy. There would be no significant anticipated economic cost to the public.

Comments on the proposal may be submitted to Bryant Clayton, Assistant Director, Unclaimed Property Division, Comptroller of Public Accounts, at bryant.clayton@cpa.texas.gov or at 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*.

The new rules and amendment are proposed under Property Code, §74.701, which authorizes the comptroller to adopt rules necessary to carry out Property Code, Title 6, regarding unclaimed property.

The new rules and amendment implement Property Code, Chapter 74.

§13.4. Report and Delivery of Certain Tangible Personal Property.

(a) Tangible personal property shall be reported in the manner prescribed in the current Comptroller's Unclaimed Property Reporting Instructions. For tangible personal property other than the contents of a safety deposit box, a holder shall, at the time of making a property report, separately provide to the comptroller an inventory of the property that:

(1) clearly describes the property being reported; and

(2) identifies whether the property is contaminated by bio-hazardous or other medical waste.

(b) The comptroller may require a holder to provide additional information about the property that is reportable under this section.

(c) A holder shall not deliver property reported under this section to the comptroller until the earlier of January 1 or the date the comptroller requests a holder deliver the property.

(d) The comptroller may determine that property reported under this section has insubstantial commercial value and may require that a holder dispose of any such property.

§13.5. Additional Required Information for Reported Mineral Proceeds.

In addition to the information required by Property Code, §74.101(c) and (e), a holder who is required to report and deliver unclaimed mineral proceeds to the comptroller under Property Code, Title 6, shall include in the property report for the proceeds the American Petroleum Institute (API) number for each lease, property, or well from which the mineral proceeds arise. The API number shall be clearly identified as such in the property description field of the property report.

§13.6. Minimum Requirements for a Claim.

A claim under Property Code, Chapter 74, Subchapter F, must identify:

(1) the name of each claimant;

(2) the mailing address for each claimant;

(3) the social security number or employer identification number of each claimant, or a statement that a claimant does not have such a number; and

(4) each specific property in the possession of the comptroller that is being claimed by reference to the unique property identification number assigned to each claimed property by the comptroller.

§13.7. Identification of Claimed Property; Burden.

A person making a claim for property under Property Code, Title 6, has the burden to identify each specific property or properties in the possession of the comptroller to which the person is making a claim.

§13.8. Certain Mineral Proceeds; Supporting Documentation Required.

(a) For mineral proceeds reported to the comptroller as having an unknown or unidentified owner, a person making a claim for the mineral proceeds must, in addition to the requirements of §13.6 of this title (relating to Minimum Requirements for a Claim), include documentation demonstrating that the claimant either:

(1) was the owner of the underlying mineral interest or had an interest, whether possessory or non-possessory, in the mineral proceeds at the time the minerals were produced; or

(2) is the legal heir or successor in title of the person who was the owner of the underlying mineral interest, whether possessory or non-possessory, or who had an interest in the mineral proceeds at the time the minerals were produced.

(b) The comptroller may require a person claiming mineral proceeds under this section to provide a final judgment in an action to quiet title, as to all potential owners or claimants of the underlying mineral interest, issued by a court of competent jurisdiction in the county in which each mineral interest is located.

(c) For a claim made under this section, the comptroller may require additional documentation as may be appropriate under the circumstances, including information about heirship and transfer of property by probate proceedings, deed, or other method of conveyance.

§13.21 Property Report Format.

(a) Property report(s) filed by a holder pursuant to Property Code, Chapters 72-75 and 77, shall be submitted to the comptroller in the NAUPA Standard Electronic File format prescribed in the Comptroller's Unclaimed Property Reporting Instructions. A property report filed under this title must be filed electronically [NAUPA2 format] via one of the online submission methods specified in the Comptroller's Unclaimed Property Reporting Instructions.

(b) Information contained in property report(s) shall comply with the data entry standards for property type, securities delivery and country codes, owner name and property description fields, and abbreviations of owner title and common terms as specified in the Unclaimed Property Reporting Instructions.

(c) Incomplete reports and reports not meeting the format specifications described above will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(d) Information shall be submitted in a format that is accessible by the comptroller's office. Reports that are encrypted, corrupted, or otherwise inaccessible will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(e) When a report is rejected, the responsible holder shall submit a revised, complete, accessible and properly formatted report to the comptroller no later than 30 calendar days after notification of the rejection.

(f) If a complete, accessible, and properly formatted report is not resubmitted within 30 calendar days after notification of the rejection,

tion, the holder will be considered delinquent and subject to interest and civil penalties and criminal charges in Property Code, Chapter 74, Subchapter H, until a complete and properly formatted report is submitted to the comptroller.

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 20, 2019.

TRD-201904944

Victoria North

Chief Counsel Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 475-2220



PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.51

The Teacher Retirement System of Texas (TRS) proposes amendments to rule §41.51, concerning appeals relating to eligibility to enroll in the Texas School Employees Uniform Group Health Coverage Program ("TRS-ActiveCare").

BACKGROUND AND PURPOSE

TRS proposes amendments to TRS Rule §41.51, concerning appeals relating to eligibility to enroll in TRS-ActiveCare. House Bill 2629 requires that in adopting rules governing the appeal of a final administrative decision, TRS ensures that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as TRS has to issue a decision. While TRS does not believe that the appeal process under TRS Rule §41.51 results in a final administrative decision by TRS, the proposed changes to this rule are in the spirit of House Bill 2629.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of the adopting the amended rule will be to allow a greater amount of time for individuals to timely file an appeal concerning eligibility to enroll in TRS-Active-

Care. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rule; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Insurance Code §1579.051 and §1579.052 (a), (b) and (e) relating to the adoption of rules for TRS-ActiveCare.

CROSS-REFERENCE TO STATUTE

The proposed amended rule implements the Texas School Employees Uniform Group Health Coverage Act (Chapter 1579 of the Texas Insurance Code).

§41.51. Appeals Relating to Eligibility.

(a) A full-time or part-time employee ("Petitioner") whose application to enroll themselves and/or their dependents in TRS-ActiveCare is denied by either TRS, the administering firm, or a participating entity may appeal the denial to TRS.

(b) An appeal made pursuant to subsection (a) of this section shall be made in writing and must be received by TRS no later than 45 days after the date of denial. The appeal shall be directed to the

TRS-ActiveCare Grievance Administrator. TRS may, at its sole discretion, provide a copy of the appeal to the administering firm or the participating entity that denied enrollment.

(c) An appeal made pursuant to subsection (a) of this section shall state the basis for appeal and shall include all relevant documents and correspondence that were considered by TRS, the administering firm, or a participating entity when the enrollment was denied. The administering firm or participating entity is required, upon request by TRS, to participate in the process.

(d) The TRS Appeal Committee ("Committee") is responsible for the review and determination of appeals made pursuant to subsection (a) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial Officer.

(e) In determining eligibility for enrollment, the Committee shall apply the TRS-ActiveCare plan design and rules in effect for the plan year in which the Petitioner is seeking enrollment. If TRS finds that extraordinary circumstances constituting "good cause" prevented the Petitioner from complying fully with a deadline established by TRS under the TRS-ActiveCare plan design or rules, the appeal may be granted. For purposes of this subsection, "good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause. If a person was reasonably prevented from complying with a deadline as a result of an unexpected natural disaster or sudden catastrophic event, that event may constitute "good cause" even though the event occurs on or near a deadline and arguably Petitioner could have met the deadline if Petitioner had acted sooner. Misinformation concerning a deadline provided to Petitioner by either TRS, the health plan administrator of TRS-ActiveCare, or a participating entity, and relied upon by Petitioner, may be grounds for "good cause" if the act of providing misinformation to Petitioner is documented or substantiated and a reasonable person would have relied on the information provided to Petitioner and reasonably would not have known the information provided to Petitioner was inaccurate.

(f) The Committee shall notify the Petitioner, the administering firm, and the participating entity of its decision in writing.

(g) If the Committee determines that the enrollment should be allowed, it shall inform the Petitioner, the administering firm, and the participating entity of the manner and effective date of enrollment by the Petitioner.

(h) The Petitioner may appeal the written decision of the [TRS Appeal] Committee relating to eligibility to the executive director.

(1) A request for an appeal to the executive director must be submitted by the Petitioner in writing and must be received by TRS by the later of: [no later than]

(A) 30 days after the date [of] the initial written decision by the [TRS Appeal] Committee is mailed; or [-]

(B) a number of days after the decision of the Committee is mailed equal to the number of days it took the Committee to issue its decision.

(2) The number of days it took the Committee to issue its decision is calculated from the date TRS received the Petitioner's appeal made pursuant to subsection (a) of this section to the date TRS mailed the Committee's decision.

(3) The request for an appeal to the executive director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(4) Subject to subsection (i) of this section and pursuant to the delegation of authority through this section, the decision of the executive director is the final decision of TRS.

(i) The Committee shall review an appeal made pursuant to subsection (a) or (h) of this section for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to subsection (a) or (h) of this section that is denied because TRS did not timely receive the appeal is a final decision by TRS.

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 30, 2019.

TRD-201905017

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 542-6524



CHAPTER 43. CONTESTED CASES

34 TAC §§43.1, 43.3, 43.5, 43.6, 43.8 - 43.10, 43.12

The Teacher Retirement System of Texas (TRS) proposes amendments to 34 TAC §§43.1, relating to administrative review of individual requests, 43.3, relating to definitions, 43.5, relating to request for adjudicative hearing, 43.6, relating to filing of documents, 43.8, relating to extensions, 43.9, relating to docketing of appeal for adjudicative hearing and dismissal for failure to obtain setting, 43.10, relating to authority to grant relief, and 43.12, relating to forms of petitions and other pleadings.

BACKGROUND AND PURPOSE

Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. TRS proposes amendments to §43.1 and §43.9 to streamline and simplify the benefit administrative appeals process. Proposed amended §43.1 authorizes the Chief Benefit Officer to make the final administrative decision of TRS and clarifies the administrative appeal process for members applying for disability retirement. Proposed amended §43.9 authorizes the Chief Operations and Administration Officer to review petitions for adjudicative hearing for docketing. In addition, the proposed amended §43.5 implements House Bill 2629, enacted by the 86th Texas Legislature, which requires TRS to modify the deadline for members or retirees to appeal a final administrative decision of TRS by affording a members or retirees at least the same amount of time to file such an appeal as TRS had to issue the final administrative decision. Lastly, TRS makes non-substantive conforming and modernizing changes to the rule text in §§43.3, 43.6, 43.8, 43.10, and 43.12.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rules will be in effect, there will be no foreseeable fiscal implications

to state or local governments as a result of administering the proposed amended rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the amended rules will be to streamline and simplify the benefit administrative appeals process and to conform the administrative appeals process with new statutory requirements. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule will be in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rules, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because they do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amended rules are proposed under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or dele-

gate its authority; and under Government Code §825.521, which provides that in adopting rules relating to appeals, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system's decision.

CROSS-REFERENCE TO STATUTE

The proposed amended rules implement the following sections or chapters of the Government Code: §825.101, concerning the general administration of the retirement system; §825.115, concerning the applicability of certain laws; and §825.204, concerning the TRS Medical Board.

§43.1. Administrative Review of Individual Requests.

(a) Organization. TRS [The Teacher Retirement System of Texas (TRS)] is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by chief benefit officer [deputy director]. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may appeal the determination, decision, or action [make a request] to the appropriate manager within the department, and then to the chief benefit officer of TRS [of the division; and then to the deputy director]. The chief benefit officer [deputy director] shall mail a final written administrative decision, which shall include:

(1) The chief benefit officer's determination regarding the person's appeal and reasons for denying the appeal, if applicable; and

(2) a statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision [to the executive director] and the deadline for doing so.

(c) A person adversely affected by a decision of the chief benefit officer [deputy director] may request an adjudicative hearing to appeal the decision of the chief benefit officer [to the executive director of TRS] as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy [executive] director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(d) [(e)] Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision [an adverse final administrative decision of the Medical Board to the TRS Board of Trustees] by requesting an adjudicative hearing as provided in §43.5 of this chapter. [A final administrative decision of the Medical Board shall include a statement of whether the member or retiree may request additional reconsideration or may appeal the decision to the board, as well as the deadline for doing so.] The deputy [executive] director shall [is authorized to] determine whether the [an] appeal [of a Medical Board decision] should be docketed and set for a

contested case hearing pursuant to §43.9 of this chapter [and to make other procedural decisions relating to such an appeal].

(e) [(d)] Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

§43.3. Definitions.

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

[(1) Adjudicative hearing--An evidentiary hearing in a contested case, as provided by Government Code, §2001.054 and paragraph (5) of this section.]

(1) [(2)] Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The deputy director [Executive Director] may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(2) [(3)] Appeal--A formal request to the executive director or board, as applicable under this chapter, to reverse or modify a final administrative decision by the chief benefit officer [deputy director] or the Medical Board on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(3) [(4)] Board--The Board of Trustees of TRS [the Teacher Retirement System of Texas (TRS)].

(4) Chief Benefit Officer--the Chief Benefit Officer of TRS or person acting in that position.

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(6) Deputy Director--the Deputy Director of TRS or person acting in that position.

(7) [(6)] Executive director--The executive director of TRS or person acting in that position; when the executive director determines that a need exists, the executive director at his or her discretion may designate a person to accomplish the duties assigned in this chapter to the executive director.

(8) [(7)] Final administrative decision--An action, determination, or decision by the chief benefit officer [deputy director] or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).

(9) [(8)] Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.

[(9) Hearing--The trial-like portion of the contested case proceeding that is handled by an administrative law judge after the Executive Director of TRS docket an appeal.]

(10) Medical board--The medical board appointed by the TRS board of trustees under Government Code, §825.204.

(11) Member--A person who is a member, retiree, or beneficiary of TRS.

(12) Order--The whole or a part of the final disposition of an appeal, whether affirmative, negative, injunctive, or declaratory in form, of the executive director, deputy director, or the board in a contested case.

(13) Party--Each person named or admitted in a contested case.

(14) Person--Any natural person or other legal entity.

(15) Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case.

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

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS.

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.

(19) TRS--The Teacher Retirement System of Texas.

(20) Trustee--One of the members of the board.

(21) With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action.

§43.5. Request for Adjudicative Hearing.

(a) On a matter over which TRS has jurisdiction and authority to grant relief that does not conflict with the terms of the pension plan, a person [party] may appeal a final administrative decision by filing a petition for adjudicative hearing with the deputy [executive] director [no later than 45 days after the date the final administrative decision is mailed]. The petition shall conform to the requirements of §43.12 of this chapter (relating to Form of Petitions and Other Pleadings).

(b) A petition for adjudicative hearing must be filed by the later of:

(1) 45 days after the date the final administrative decision is mailed; or

(2) a number of days after the final administrative decision is mailed equal to the number of days it took TRS to issue the final administrative decision.

(c) The number of days it took TRS to issue the final administrative decision is calculated from the date TRS received the person's appeal of the department manager's decision to the date TRS mailed the final administrative decision.

§43.6. Filing of Documents.

All documents relating to any appeal of a final administrative decision [pending or to be instituted before the executive director or the board] shall be filed with the deputy [executive] director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. A document may be filed with TRS by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail. A document is deemed filed when mailed if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. If the deputy [executive] director has docketed an appeal and referred it for an adjudicative hearing, documents

shall be filed with the administrative law judge and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge.

§43.8. Extensions.

Unless otherwise provided by statute, the time for filing pleadings or other documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings that initiate a proceeding or that are made before an appeal has been referred for an adjudicative hearing, the deputy [executive] director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after TRS has referred the appeal for an adjudicative hearing, rules governing hearings before SOAH will control so long as the matter is before SOAH. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official. For matters returned by an administrative law judge or hearing examiner to TRS, either through dismissal from the adjudicative hearing docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted. The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

§43.9. Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting.

(a) On an appeal over which TRS has jurisdiction, authority to grant relief, in which the relief requested is consistent with the terms of the plan, and that otherwise complies with this chapter, the deputy [executive] director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and refer the matter for an adjudicative hearing before the State Office of Administrative Hearings or otherwise as authorized by law.

(b) The deputy [executive] director may decline to docket an appeal over which TRS has no jurisdiction or no authority to grant relief, that seeks relief that is inconsistent with the terms of the pension plan, that is not timely filed, or that otherwise fails to comply with this chapter. ~~[The executive director may also decline to docket a matter for which a contested case hearing is not required by law or for which other available procedures are more appropriate.]~~ The deputy [executive] director's decision declining to docket an appeal is the final decision of TRS when the circumstances described in §2001.144, Government Code, are met. A person may not appeal such decision to the executive director or the board.

(c) Prior to docketing an appeal, the deputy [executive] director ~~[or his designee]~~ may review the request ~~[petition]~~ filed with TRS to determine the sufficiency. If the petition does not materially comply with this chapter, the deputy [executive] director shall return the petition to the person who filed it, along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file a corrected petition. If the petition is not corrected to substantially comply with this chapter within the time given, the deputy [executive] director may decline to docket the appeal.

(d) If a contested case is referred to the SOAH [State Office of Administrative Hearings (SOAH)] for adjudicative hearing, then during the period of time the case is before SOAH, the adjudicative hearing rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent

with applicable statutes or constitutional provisions. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official.

(e) A party that files an appeal and causes a matter to be docketed and referred to for adjudicative hearing shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the matter for an adjudicative hearing.

§43.10. Authority to Grant Relief.

At any time before an appeal is referred for adjudicative hearing, the deputy [executive] director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interest of other individual parties are not adversely affected and the relief does not conflict with the terms of the pension plan. If a matter has been referred to SOAH, the SOAH administrative law judge may dismiss the case from the SOAH docket in accordance with SOAH rules. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the dismissal of the case.

§43.12. Form of Petitions and Other Pleadings.

(a) Petitions, briefs, and other pleadings shall be typed [typewritten] or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Copies [Reproductions] may be used, provided they [all copies] are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition appealing a final administrative decision and requesting an adjudicative hearing shall specify the action desired from TRS and shall be filed with TRS, directed to the attention of the deputy [executive] director.

(c) The original of any pleading filed with TRS shall be signed ~~[in permanent ink]~~ by the party filing it or by his authorized representative. Pleadings shall contain the address, ~~[and]~~ telephone number, and email address of the party filing the documents or the name, business address, telephone number, email address, and fax [facsimile] number [; and business address] of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, ~~[and]~~ telephone number, and email address of petitioner and the name, address, telephone number, email address, and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. In lieu of the tax number, the petition may include other information sufficient to identify the member or beneficiary whose interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address, ~~[and]~~ telephone number, and email address. If such information is not provided on the original petition, the executive director, board of trustees, or administrative law judge may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)." If a TRS, SOAH, or other adjudicative hearing docket number has been assigned, pleadings shall contain the docket number.

(f) All pleadings shall contain the following:

- (1) the name of the party filing the pleading;

- (2) a concise statement of the facts relied upon by the party;
- (3) a request stating the type of relief, action, or order desired by the party;
- (4) a certificate of service conforming to subsection (g) of this section; and
- (5) any other matter required by statute.

(g) Written pleadings [~~other than the original petition~~] may be served by hand-delivery, courier-receipted delivery, fax [~~facsimile transmission~~], or regular, certified, or registered mail upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service may be made upon a party by serving the attorney of record. The following form of certification will be sufficient: "I hereby certify that I have this ____ day of _____, 20__, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) A party may object to the form or sufficiency of a pleading by filing the objections in writing at least 15 days before the hearing

date. If the objections are sustained, the administrative law judge shall allow a reasonable time for amendment.

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 30, 2019.

TRD-201905015

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 542-6560



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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.2

The Texas Higher Education Coordinating Board adopts amended Chapter 4, Subchapter A, §4.2 to include reference authority provided by Texas Education Code (TEC) §51.9364, without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5989). The rule will not be republished.

This revision provides instruction to institutions of higher education and private or independent institutions of higher education regarding transcript notations for students ineligible to reenroll for a reason other than academic or financial.

No comments were received.

The amendments are adopted under the Texas Education Code, §51.9364, which provides for certain notations required on student transcripts.

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 19, 2019.

TRD-201904936
William Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: January 8, 2020
Proposal publication date: October 18, 2019
For further information, please call: (512) 427-6523



19 TAC §4.7

The Texas Higher Education Coordinating Board adopts the amendment to Chapter 4, Subchapter A, §4.7, concerning Student Transcripts, is adopted without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5990). The rule will not be republished.

No comments were received.

The amendments are adopted under the Texas Education Code, § 51.9364, which provides for certain notations required on student transcripts.

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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William Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6523



SUBCHAPTER T. REQUIRED DEGREE PLANNING

19 TAC §§4.340 - 4.347

The Texas Higher Education Coordinating Board (THECB) adopts new rules for inclusion in the Texas Administrative Code (TAC), Title 19, Part 1, Chapter 4, Subchapter T, §§4.340, 4.341, 4.343 - 4.347, concerning required degree plans for students at public institutions of higher education in Texas, without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5991). The rules will not be republished. Section 4.342 is being adopted with non-substantive changes, and the rule will be republished.

Senate Bill 25 and House Bill 3808 enacted by the 86th Texas Legislature and signed by the Governor, required the THECB to adopt rules through the negotiated rulemaking process for the administration of required filing of degree plans by students. The new subchapter provides timelines for students to file degree plans and responsibilities of institutions and students in the process of filing degree plans.

The following comments were received:

Comment: The institutional representative for The University of Texas at Arlington (UTA) offered comments after review with multiple stakeholders. Specifically:

"1. Dual credit students are currently classified as non-degree seeking students at UTA, and thus they do not have a specific major. Requiring these students to declare a major after the com-

pletion of 15 hours may create data reporting challenges and potentially impact retention and graduate rates.

2. Regarding 4.345 item 2, preventing a student from obtaining their official transcript if they do not have a degree plan filed (major) is antithetical to the goal of degree completion and presents a real-world situation of students selecting a major just to get their transcript, which impacts reporting (this rule currently exist for students who have a 45-hour on their account).

Staff response: Staff recommends no action as a result of the first comment, because the proposed rules largely mirror the statutory language. Texas Education Code (TEC) §51.9685 (c-2) (1)-(2) requires students enrolled in dual credit courses with a cumulative 15 semester credit hours (SCH) to file a degree plan. The Negotiated Rulemaking Committee discussed and recognized the challenges and provided clarification in rules to stipulate that the 15 SCH of accumulated credit be at a single institution.

Staff recommends no action as a result of the second comment because the proposed rules also align with statute concerning withholding transcripts from students failing to file a degree plan. TEC §51.9685 (f) states, "The student may not obtain an official transcript from the institution until the student has filed a degree plan with the institution. Institutions are obligated to withhold the transcript of students not filing the required degree plan.

Comments and staff responses were sent to the Negotiated Rulemaking Committee for consensus. The committee agreed with the staff assessments and responses to the comments.

Comment: Dallas County Community College District (DCCCD) commented to suggest that the requirement of filing a degree plan include students enrolled in dual credit courses with the intent to earn a certificate. DCCCD also suggested a definition of certificate programs be added.

Staff response: Staff recommends no action as a result of the DCCCD comment. The statute references associate and bachelor's degree programs only, and rules mirror the statutory language. Rules and statute do not prohibit institutions from requiring students in certificate programs to file a degree plan.

Comment and staff response were sent to the Negotiated Rulemaking Committee for consensus. The committee agreed with the staff assessment and response to the comment.

The new subchapter is adopted under TEC Chapter 51 Provisions Generally Applicable to Higher Education, Subchapter Z, Miscellaneous Provisions, §51.9685 Required Filing of Degree Plan, which authorizes the THECB to adopt rules through the negotiated rulemaking process for the administration and to ensure compliance of required filing of degree plans by students.

§4.342. Definitions.

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

(1) Degree plan - defined in TEC Section 51.9685 (a) (1) A statement of the course of study requirements that an undergraduate student at an institution of higher education must complete in order to be awarded an associate or bachelor's degree from the institution.

(2) Institution of higher education - has the meaning assigned by TEC Section 61.003 (8).

(3) Board or Coordinating Board - The Texas Higher Education Coordinating Board

(4) Dual credit courses - College courses in which an eligible high school student enrolls and receives credit for the course(s) from both the college and the high school.

(5) Associate degree program - A grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to an associate degree from an institution of higher education.

(6) Bachelor's degree program - Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a baccalaureate degree from an institution of higher education.

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 19, 2019.

TRD-201904939

William Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6523



CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER L. MULTIDISCIPLINARY STUDIES ASSOCIATE DEGREES

19 TAC §9.555

The Texas Higher Education Coordinating Board (THECB) adopts amendments to Texas Administrative Code (TAC), Title 19, Chapter 9, Program Development in Public Two-Year Colleges, Subchapter L, Multidisciplinary Studies Associate Degrees §9.555, Student Advising, to include reference to the degree plan requirements of new Chapter 4, Subchapter T, Required Degree Planning, without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (Volume 44, Page 5993). The rule will not be republished.

Senate Bill 25 and House Bill 3808 enacted by the 86th Texas Legislature and signed by the Governor, required the THECB to adopt rules through the negotiated rulemaking process for the administration of required filing of degree plans by students.

The amendment to §9.555, Student Advising, provides that a student enrolled in a multidisciplinary studies associate degree program file a degree plan according to the new Chapter 4 Subchapter T.

There were no comments received specifically concerning students enrolled in a multidisciplinary studies associate degree program and the requirement of degree plans.

The amendment to §9.555, Student Advising is adopted under the Texas Education Code, §51.9685 which provides the THECB, in consultation with institutions of higher education, with the authority to adopt rules using negotiated rulemaking

procedures for the administration of the statute for required filing of degree plans.

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 19, 2019.

TRD-201904940

William Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6523



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER AA. COMMISSIONER'S

RULES ON SCHOOL FINANCE

19 TAC §61.1009

The Texas Education Agency (TEA) adopts new §61.1009, concerning the fast growth allotment. The new section is adopted without changes to the proposed text as published in the October 4, 2019 issue of the *Texas Register* (44 TexReg 5698). The rules will not be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Texas Education Code (TEC), §48.004, directs the commissioner to adopt rules and take action as necessary to implement and administer the Foundation School Program. TEC, §48.111, enacted by HB 3, is part of the Foundation School Program and provides additional funding for a school district in which the growth in student enrollment in the district over the preceding three school years is in the top quartile of student enrollment growth in school districts in the state. The new statute establishes that such a school district is entitled to receive an amount equal to the basic allotment multiplied by 0.04 for each student in average daily attendance. Adopted new 19 TAC §61.1009, Fast Growth Allotment, implements the requirements of TEC, §48.111, as follows.

Subsection (a) defines what a fast growth district is, explains which enrollment figures will be used to calculate enrollment growth, describes the method for calculating enrollment growth, specifies what is considered as the basic allotment, and defines applicable year in the context of the proposed rule.

Subsection (b) explains the eligibility criteria. Charter schools are specifically excluded from eligibility for the fast growth allotment in TEC, §12.106(a), as amended by HB 3.

Subsection (c) explains how the allotment will be calculated mathematically.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 4, 2019, and ended November 4, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: Klein Independent School District (ISD) commented that the fast growth allotment should be based on absolute student growth and not be percentage based. The district suggested that the rule as proposed does not appear to meet the legislative intent of the fast growth allotment. The district explained that 237 of the 316 districts that would receive the allotment based on the proposed rule had enrollment growth of less than 200 students from 2017-2019; 195 of the districts had actual enrollment of 100 students or less. The district stated that the associated costs of educating that number of additional students is provided in the regular funding formula because those districts are not incurring costs associated with operating and equipping new schools. The district suggested that the allotment be calculated in both ways for districts affected by Hurricane Harvey. In addition, the district recommended using a five-year period to calculate enrollment growth but acknowledged the limitation in the law of looking back over only three years. The district suggested that alternatively, TEA could begin with 2016 enrollment in order to capture three years of enrollment growth.

In addition, more than 2,500 school district employees, parents, and citizens of Klein ISD stated that enrollment growth should follow the students and be based on absolute enrollment growth, not percentage based. More than 2,500 school district employees, parents, and citizens of Klein ISD also stated that the measurement period for the calculation should be increased to five years instead of two so that the district was not impacted for an atypical growth year after Hurricane Harvey.

One individual suggested a measurement period of seven years instead of two and one individual suggested using a three-year moving average.

Agency Response: The agency disagrees that the calculation of enrollment growth should be based on absolute student growth instead of on percentage of growth. Calculating enrollment growth using only absolute numbers would disproportionately negatively impact small and mid-sized districts and would not recognize the growth experienced by small and mid-sized districts. Those districts also have an increased need for funding to alleviate the costs of growing quickly. As proposed, because the formula delivers an allotment based on the total average daily attendance (ADA) of the district, those smaller districts receive a much smaller allotment than the larger districts.

The fast growth allotment is intended to assist with costs associated with rapid growth regardless of the need to build new facilities, which are funded through the Foundation School Program under the New Instructional Facility Allotment.

The agency also disagrees that the rule should be changed to utilize a different measurement period than proposed. The enacting legislation specifies growth over the preceding three years.

Comment: Seventy-nine commenters made general comments about Klein ISD being a growing district and in need of additional funding and urged TEA to include the district as a fast growth district but did not specifically comment on the rule language.

Agency Response: The agency disagrees. The rule as proposed utilizes specific criteria to determine eligibility and cannot include provisions to consider specific districts that fall outside those criteria.

Comment: A community member commented that Klein ISD should not get the fast growth allotment. The commenter suggested that there needed to be a better and more accurate ac-

counting for monies used currently before any more money was given.

Agency Response: The agency agrees that Klein ISD is not eligible for the fast growth allotment for the 2019-2020 school year.

Comment: Schertz-Cibolo-Universal City ISD asked that TEA consider a variance in regard to the sole use of "Preceding Three Years" for unique situations. The district explained that the district's growth over the preceding three years was 1.42% but their five-year growth was 20.28% and ten-year growth was 34.59%. They stated that the wealth per student in Schertz-Cibolo-Universal City ISD was relatively low compared to other fast-growth districts. The district also commented that the district is projected to continue growing for the next 20-25 years. In addition, the district stated that TEA needs to consider using enrollment numbers, not percentages, along with a longer analysis timeline.

Eighteen individuals commented regarding Schertz-Cibolo-Universal City ISD that enrollment growth should not be percentage-based and that the three-year measurement period did not adequately capture the needs of a growing district.

Agency Response: The agency disagrees that the calculation of enrollment growth should be based on absolute student growth instead of on percentage of growth. Calculating enrollment growth using only absolute numbers would disproportionately negatively impact small and mid-sized districts and would not recognize the growth experienced by small and mid-sized districts. Those districts also have an increased need for funding to alleviate the costs of growing quickly. As proposed, because the formula delivers an allotment based on the total ADA of the district, those smaller districts receive a much smaller allotment than the larger districts.

The agency also disagrees that the rule should be changed to utilize a different measurement period. The enacting legislation specifies growth over the preceding three years.

Comment: Eighteen individuals made general comments about the growth in Schertz-Cibolo-Universal City ISD and the need for additional funding without specifically commenting on the rule.

Agency Response: The agency disagrees. The rule as proposed utilizes specific criteria to determine eligibility and cannot include provisions to consider specific districts that fall outside those criteria. Schertz-Cibolo-Universal City ISD is not eligible for the fast growth allotment for the 2019-2020 school year.

Comment: Troy ISD commented that the methodology that TEA was proposing was fair to small and mid-size districts.

Agency Response: The agency agrees that the proposed methodology is fair to small and mid-size districts as well as large districts.

Comment: A school district administrator commented that TEA was doing exactly right with the calculations but commented that the law should be amended to offer a tiered approach to identifying fast-growth districts.

Agency Response: The agency agrees that the calculations are in line with requirements of the statute. The agency disagrees with a tiered approach to identifying fast-growth districts because the enabling legislation does not allow that approach.

Comment: New Caney ISD, Montgomery ISD, and Frisco ISD as well as State Senator Donna Campbell and State Representative Matt Shaheen suggested that TEA include an enrollment

standard of 2,500 students and enrollment growth of 10% over the last five years or a net increase of more than 3,500 students in order to designate a district as a fast-growth district.

Agency Response: The agency disagrees that the calculation of enrollment growth should include an enrollment standard of 2,500. This excludes small and mid-size districts experiencing fast growth. The agency also disagrees with the requirement of a 10% enrollment growth or net increase of more than 3,500 students. The enabling legislation specifies that districts in the top quartile of student enrollment growth over the preceding three years are entitled to the allotment.

Comment: The Fast Growth School Coalition as well as State Representatives Jon E. Rosenthal and Matt Krause suggested that TEA expand the definition of top quartile to include both percentage growth and growth in number of students.

Agency Response: The agency disagrees. Including both methods of calculating enrollment growth is not in line with estimates provided to the legislature during the legislative session. This type of change in eligibility calculations would need to be at the direction of the legislature during the next legislative session.

Comment: Cypress Fairbanks ISD, Fort Bend ISD, and Klein ISD commented that TEA could consider using both absolute enrollment growth and the percentage growth in the 2019-2020 school year and then modifying the proposed methodology to absolute enrollment growth for future years. Alternatively, they suggested that TEA could administer the allotment as proposed for the 2019-2020 school year and move to absolute enrollment growth for future years.

Agency Response: The agency disagrees. Including both methods of calculating enrollment growth is not in line with cost estimates provided to the legislature during the legislative session. This type of change in eligibility calculations would need to be at the direction of the legislature during the next legislative session.

Comment: The Texas School Alliance suggested using a factor based on the numeric increase in student enrollment in addition to or instead of relying only on percentage increase. They also suggested adopting the rule as proposed and revisiting it for the next school year.

Agency Response: The agency disagrees. The enabling legislation requires the allotment be based on the total ADA of each district. This type of change in the allotment calculation would need to be at the direction of the legislature during the next legislative session.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.111, as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which authorizes the fast growth allotment; TEC, §48.004, as redesignated and amended by HB 3, 86th Texas Legislature, 2019, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; and TEC, §12.106(a), as amended by HB 3, 86th Texas Legislature, 2019, which excludes charters from receiving the fast growth allotment.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.111, as added by HB 3, 86th Texas Legislature, 2019; §48.004, as redesignated and amended by HB 3, 86th Texas Legislature, 2019; and §12.106(a), as amended by HB 3, 86th Texas Legislature, 2019.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 20, 2019.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: October 4, 2019

For further information, please call: (512) 475-1497



CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

The Texas Education Agency (TEA) adopts amendments to §§62.1001, 62.1011, 62.1031, and 62.1051 and the repeal of §62.1041, concerning equalized wealth level. The amendments and repeal are adopted without changes to the proposed text as published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6201) and will not be republished. The adopted rule actions implement House Bill (HB) 3, 86th Texas Legislature, 2019, by removing an outdated provision and updating references to statute.

REASONED JUSTIFICATION: In 1993, the 73rd Texas Legislature created the current wealth equalization system in Texas Education Code (TEC), Chapter 36. Subsequently in 1995, the 74th Texas Legislature moved the wealth equalization provisions in the TEC from Chapter 36 to Chapter 41. At that same time, TEC, Chapter 16, pertaining to the Foundation School Program, was recodified as Chapter 42. In 2019, the 86th Texas Legislature moved the wealth equalization provisions in the TEC from Chapter 41 to Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

The adopted revisions amend 19 TAC §62.1001, Authority of Trustees; Duration of Agreements; §62.1011, Election Duties of Board of Trustees; §62.1031, Date of Agreement for Purposes of Determining Election Date; and §62.1051, Definition of Parcel Detached and Annexed by Commissioner, to modify statutory references to correspond to current codification. The adopted revisions also repeal 19 TAC §62.1041, Weighted Students in Average Daily Attendance for Purposes of Tax Rate Rollback, to remove an outdated provision. The tax rollback calculation in TEC, Chapter 49, does not use weighted average attendance.

Additionally, the subchapter title is updated to Commissioner's Rules Concerning Options for Local Revenue Levels in Excess of Entitlement.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 25, 2019, and ended November 25, 2019. No public comments were received.

19 TAC §§62.1001, 62.1011, 62.1031, 62.1051

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §49.006, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legisla-

ture, 2019, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §49.006, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2019.

TRD-201904932

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



19 TAC §62.1041

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §49.006, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which authorizes the commissioner of education to adopt rules necessary for the implementation of TEC, Chapter 49, Options for Local Revenue Levels in Excess of Entitlement.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §49.006, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §102.1309, §102.1315

The Texas Education Agency (TEA) adopts amendments to §102.1309 and §102.1315, concerning innovation districts. The amendments are adopted without changes to the proposed text as published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6203). The rules will not be republished. The adopted amendments implement changes made by House

Bill (HB) 3, 86th Texas Legislature, 2019, by reflecting the recodification of Texas Education Code (TEC), Chapters 41 and 42, and specifying additional reasons the commissioner may terminate a district's designation as a district of innovation.

REASONED JUSTIFICATION: Chapter 102, Subchapter JJ, establishes provisions relating to the applicable processes and procedures for innovation districts.

The adopted amendment to §102.1309 updates statutory references to align with HB 3, 86th Texas Legislature, 2019, which recodified sections of TEC, Chapter 41, into TEC, Chapter 49, and recodified sections of TEC, Chapter 42, into TEC, Chapter 48.

The adopted amendment to §102.1315 also reflects changes in statute made by HB 3. TEC, §12A.008(b-1), was amended by HB 3 to extend the commissioner's authority to terminate a district's designation as a district of innovation for failure to comply with the duty to discharge or refuse to hire certain employees or applicants (1) for employment under TEC, §12.1059; (2) convicted of certain offenses under TEC, §22.085; or (3) not eligible for employment in public schools under TEC, §22.092, as added by HB 3. The adopted amendment to §102.1315(a)(3) adds these provisions to the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 25, 2019, and ended November 25, 2019. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §12A.008(b-1), as added by House Bill 3, 86th Texas Legislature, 2019, which allows the commissioner of education to terminate a district's designation as a district of innovation if it fails to comply with the duty to discharge or refuse to hire certain employees or applicants for employment; and TEC, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §12A.008(b-1) and §12A.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.

Filed with the Office of the Secretary of State on December 19, 2019.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER W. MISCELLANEOUS RULES FOR GROUP AND INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

28 TAC §3.3602

The Commissioner of Insurance adopts new 28 TAC §3.3602, relating to requirements for short-term limited-duration coverage. Section 3.3602 implements Senate Bill 1852, 86th Legislature, Regular Session (2019). The new section also provides consumer protections related to renewability and provides consumers notice of the protections they have when purchasing such products. The new section is adopted with changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6686). The rules will be republished. The changes to the proposed text are made in response to public comments and also include other minor changes to add clarity and consistency in the rule text and form and conform with the department's current writing style. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect people other than those previously on notice.

The department revised Figure: 28 TAC §3.3602(e) to clarify the instructions in paragraph 6 stating the maximum amount the policy will pay within the policy term, or if applicable, on a lifetime basis. This change was necessary to provide consistent language to describe policy limits.

The department revised Figure: 28 TAC §3.3602(e) to clarify in paragraph 8 that the term "PPO" refers to a preferred provider benefit plan and the term "EPO" refers to an exclusive provider benefit plan.

The department revised Figure: 28 TAC §3.3602(e) to reword the question in paragraph 9. The department replaced "What services does the plan cover?" with "What type of care will this plan cover?" to conform to other language in the form.

In response to a comment, the department revised §3.3602(d)(2) to clarify that renewal does not permit new underwriting.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to include the plan marketing name and the name of the insurer that is underwriting the coverage above paragraph 1. The department made conforming changes to §3.3602(f)(5)(A), which requires issuers to include these elements in a combined disclosure form.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to use plain language in its terminology in paragraph 1. The department changed paragraph 1, to remove language stating that "ACA plans cover hospital, medical, and surgical expenses due to an injury or sickness." The department reformatted the information using bullets and added language to indicate that, unlike ACA plans, a short-term limited-duration plan may not cover all injuries or sicknesses a prospective enrollee had before applying, and it does not allow a prospective enrollee to get federal assistance with premiums or out-of-pocket costs, such as tax credits and cost-sharing reductions.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to add the word "to" between the words "right" and "renew" in paragraph 3.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to add information about applying for an ACA plan outside of the open enrollment period. The department changed paragraph 4 of the disclosure form to provide informa-

tion on how to find out about a qualifying life event and provided examples of such events.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to clarify the instructions in paragraph 7 to state that if the deductible can reset more frequently than annually, then issuers must disclose that information.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to inform consumers in paragraph 8 about the potential of balance billing in an indemnity plan.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to require issuers to include in paragraph 8 a website address to the plan directory or other information on how to locate providers, for any plan that has a provider network.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to clarify in paragraph 9 that short-term limited-duration plans limit coverage for some types of care.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to instruct the consumer in paragraph 9 to ask the agent for cost-sharing information if it is not included in the chart.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to clarify that the chart in paragraph 9 must include any applicable benefit maximums.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to clarify that row (o) of the chart in paragraph 9 relates to outpatient drug coverage. The department clarified the instructions for row (o) to specify that if prescription drug coverage is limited by a formulary, that information must be stated, and a link to the formulary must be provided. The department also clarified that a discount plan should not be represented as prescription drug coverage.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to include a statement in Spanish and English in paragraph 10 before the signature line. This statement instructs the prospective enrollee not to sign the document if they do not understand it.

In response to a comment, the department revised Figure: 28 §3.3602(e) to include information in the affirmation statement in paragraph 10 about receiving the disclosure form in writing before completing the application or making any payment.

In response to a comment, the department revised Figure: 28 TAC §3.3602(e) to include the department's consumer help line phone number and website address under paragraph 11 so that consumers know who to contact if they experience problems with the plan. The addition of this information necessitated that the federal notice to be renumbered as paragraph 12. The department also revised §3.3602(f)(5)(G) to clarify that a combined disclosure form and outline of coverage must include paragraph 12 of the disclosure form about the federal notice. This change was necessary due to the addition of the department's contact information in paragraph 11 of the disclosure form.

In response to a comment, the department revised §3.3602(f)(5)(A) to clarify that a combined disclosure form must include the title of the form.

REASONED JUSTIFICATION. New §3.3602 is necessary to implement SB 1852. Insurance Code §1509.002(a) requires the Commissioner, by rule, to prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and ap-

plication. Insurance Code §1509.002(c) also requires an insurer issuing a short-term limited-duration insurance policy to adopt procedures in accordance with the rule to obtain a signed form from the insured acknowledging that the insured received the disclosure form. Section 1509.002(c) requires the rule to allow for electronic acknowledgment.

Section 3.3602(a). New §3.3602(a) describes the purpose of the section, which is to define short-term limited-duration insurance and requirements for short-term limited-duration coverage. New §3.3602(a) also provides that the section applies to any individual or group accident and health insurance policy or certificate issued under Insurance Code Chapter 1201 or 1251.

Section 3.3602(b). New §3.3602(b) provides that, for purposes of 28 TAC Chapters 3, 21, and 26, short-term limited-duration insurance has the meaning given in Insurance Code §1509.001. Insurance Code §1509.001 states that, in Chapter 1509, "short-term limited-duration insurance" has the meaning assigned by 26 C.F.R. §54.9801-2. Title 26 C.F.R. §54.9801-2, which defines "short-term, limited-duration insurance" to mean "health insurance coverage provided pursuant to a contract with an issuer that: [h]as an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total," and displays a specified notice along with any additional information required by state law.

Section 3.3602(c). New §3.3602(c) provides that a policy or certificate must provide benefits consistent with the minimum standards for the type of coverage offered, and it clarifies that the rules in the subchapter are not inclusive of all requirements that apply to short-term limited-duration plans. For example, many requirements in Title 8 of the Insurance Code (concerning Health Insurance and Other Health Coverages) apply, including general provisions in Chapters 1201 and 1251, and mandated benefit requirements under Title 8, Subtitle E.

Section 3.3602(d). New §3.3602(d) provides the requirements for individual and group short-term limited-duration coverage.

New §3.3602(d)(1) provides that short-term limited-duration coverage may not be marketed as guaranteed renewable because, by definition, under Insurance Code §1509.001, short-term limited-duration insurance cannot be renewed for a total duration that exceeds 36 months. Since the term "guaranteed renewable" implies a continuous right to renew, use of the term with short-term limited-duration insurance would be misleading.

New §3.3602(d)(2) provides that short-term limited-duration coverage must be marketed either as "nonrenewable," or as "renewable (without new underwriting)" at the option of the policyholder or enrollee, if the enrollee contributes to the premium. Section 3.3602(d)(2) allows issuers to choose whether to issue short-term limited-duration plans that are either nonrenewable or renewable and ensures that plans are marketed consistent with the terms of the policy. To avoid misleading prospective enrollees, if an issuer opts to permit renewability it must do so at the option of the policyholder. In a group policy in which the enrollee contributes to the premium, the enrollee controls the renewal option.

New §3.3602(d)(3) provides that short-term limited-duration coverage must clearly state the duration of the initial term and the total maximum duration, including renewal options. Section 3.3602(d)(3) helps ensure that prospective enrollees are fully informed regarding how long they can keep the coverage.

New §3.3602(d)(4) provides that short-term limited-duration coverage may not be modified after the date of issue, except by signed acceptance of the enrollee. Section 3.3602(d)(4) ensures that the enrollee is informed and accepts the changes in coverage, and also ensures that an issuer does not circumvent the policy terms of renewability by unilaterally modifying the coverage.

New §3.3602(d)(5) provides requirements for renewable, short-term limited-duration coverage. Section 3.3602(d)(5)(A) provides that a short-term limited-duration individual policy or group certificate must include a statement that the enrollee has a right to continue the coverage in force by timely payment of premiums for the number of terms listed. Section 3.3602(d)(5)(A) also provides for the enrollee to be informed about the enrollee's right to continue coverage when timely premium payments are made.

New §3.3602(d)(5)(B) provides that a short-term limited-duration individual policy or group certificate must include a statement that the issuer will not increase premium rates or make changes in provisions in the policy or certificate on renewal based on individual health status. Section 3.3602(d)(5)(B) ensures that coverage that is marketed as renewable at the option of the enrollee does not require additional underwriting or change the terms of coverage at renewal.

New §3.3602(d)(5)(C) provides that, if applicable, a short-term limited-duration individual policy or group certificate must include a statement that the issuer retains the right, at the time of policy renewal, to make changes to premium rates by class. Section 3.3602(d)(5)(C) makes clear that a renewable policy is not subject to individual rating adjustments at renewal. The statement would not be required when an issuer chooses to offer a fixed premium for the life of the policy.

New §3.3602(d)(5)(D) provides that if a short-term limited-duration individual policy or group certificate is renewable, it must include a statement that the issuer, at the time of renewal, may not deny renewal based on individual health status. Section 3.3602(d)(5)(D) helps ensure that coverage that is marketed as renewable at the option of the enrollee provides contractual terms that are consistent with that marketing.

Section 3.3602(e). New §3.3602(e) provides that an issuer offering short-term limited-duration insurance must include a written disclosure form that is consistent with the form in Figure: 28 TAC §3.3602(e) and the requirements of §3.3602. Section 3.3602(e) is necessary because Insurance Code §1509.002(a) requires the Commissioner by rule to prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application.

In addition to the elements specifically required by Insurance Code §1509.002(b), the disclosure form includes a statement that the plan is exempt from the federal Affordable Care Act (ACA) and may not cover all necessary care. This information informs prospective enrollees about possible benefit limitations.

Along with information about renewability, the form states that "[t]he amount of your premium payment might change after you renew this plan. But the amount can't go up because of a change in your health. A change in your health can't affect your benefits or your right to renew." These statements are included for consistency with new §3.3602(d)(2) and (5).

Along with the open enrollment information, the form includes an explanation that prospective enrollees can sign up for a plan

not covered by the ACA at any time, but that they can be denied for health reasons when they sign up for a new plan. This information is provided to inform prospective enrollees about underwriting that may occur during the initial application for short-term limited-duration coverage.

The form also references Healthcare.gov. This information provides prospective enrollees with a resource to research open enrollment information, including eligibility information about qualifying life events for enrollment at other times.

Following information on the plan's deductible, the form includes information on whether the plan uses a provider network and how to access the provider directory, if applicable. This information helps to ensure prospective enrollees understand the nature of coverage and whether limits apply based on their choice of provider. For indemnity plans, the form also clarifies that providers have not agreed to a set price with the plan and can charge the consumer for any amount not paid by the plan.

The form uses a chart to describe covered services and any limits that apply to those services. This information is necessary because Insurance Code §1509.002(b)(7)(A)-(H) and (8) require that the disclosure form state whether certain health care services are covered, specifically: prescription drug coverage, mental health services, substance abuse treatment, maternity care, hospitalization, surgery, emergency health care, preventive health care, and any other information the Commissioner determines is important for a purchaser of a short-term limited-duration policy.

Within the chart of covered services, the form expands categories required under Insurance Code §1509.002(b)(7)(B), (C), (D), (E), and (F) in order to separate coverage for facility fees and physician fees. In describing maternity care coverage, the form also separates prenatal visits from physician services at delivery. The form expands on emergency health care to identify coverage for urgent care and ambulance services. The form adds primary care and specialist care office visits.

Issuers are permitted, but not required, to include cost-sharing information in the benefits chart. This flexibility allows an issuer to incorporate key plan summary information within the disclosure document, rather than producing and delivering a separate document that may be repetitive. If the issuers do not include cost-sharing information, the form instructs the consumer that they may request the information.

The form includes the department's contact information through which a consumer can file a complaint or verify an agent's license number. The form also includes a signature line on which the consumer verifies that they received the form before applying or paying for coverage and that they understand the information.

The form also includes the text of the federally required notice. This is included because Insurance Code §1509.001 defines short-term limited-duration insurance based on the federal definition, at 45 C.F.R. Section 54.9801-2. The federal regulation defining "short-term, limited-duration insurance" includes the requirement to provide a specific notice.

Section 3.3602(f). New §3.3602(f) provides the disclosure form requirements. Section 3.3602(f) is necessary because Insurance Code §1509.002(b) provides the information that the disclosure form must include.

New §3.3602(f) provides that in creating the disclosure form, issuers must follow all instructions in the subsection. Section

3.3602(f) ensures that issuers produce the disclosure form correctly and accurately.

New §3.3602(f)(1) provides that a disclosure form must be produced for each plan option that the issuer makes available and reflect the specific terms of the plan. New §3.3602(f)(1) is included because the nature of the information required by Insurance Code §1509.002(b) varies across plan offerings. For example, the plan's duration, renewal options, benefits, deductible, coverage maximum, and coverage for preexisting conditions can vary across different issuers and plans offered by an individual issuer. In order to accurately educate the prospective enrollee regarding the plan or plans available, a single disclosure form should not be used to reflect multiple plans.

New §3.3602(f)(2) provides that the disclosure form must accurately represent the short-term limited-duration coverage. Section 3.3602(f)(2) is provided to fully inform the prospective enrollee about the coverage offered.

New §3.3602(f)(3) provides that if the disclosure form in new Figure 28 TAC §3.3602(e) does not accurately represent the plan being offered, the issuer may modify the form as necessary. When filing the form with the department, the issuer must clearly identify any changes made and explain the reason for modifying the form. Section 3.3602(f)(3) provides flexibility to ensure the disclosure form does not provide inaccurate information. In reviewing filed disclosures, the department will ensure that the changes made accurately represent the terms of the plan.

New §3.3602(f)(4) provides that the chart under disclosure form paragraph (9) may be supplemented to include cost-sharing information for each benefit. Section 3.3602(f)(4) provides flexibility for issuers that wish to use the disclosure form as a primary plan summary document, rather than creating a separate document that may duplicate much of the information in the form.

New §3.3602(f)(5) provides that the disclosure form in Figure 28 TAC §3.3602(e) may be combined with the outline of coverage required under Insurance Code §1201.107 and 28 TAC §3.3093(4), if certain requirements are met. Section 3.3602(f)(5) provides flexibility for issuers in the individual market, which are required to provide an outline of coverage document that includes much of the same information that is contained in the disclosure form. Allowing issuers to combine the documents eliminates what would otherwise be duplicative disclosure requirements and enables a more streamlined approach.

Section 3.3602(g). New §3.3602(g)(1) provides that the disclosure form must be filed with the department for review before use, consistent with filing procedures in 28 TAC Chapter 3, Subchapter A.

New §3.3602(g)(2) requires that a disclosure form must be provided in writing to a prospective enrollee before the individual completes an application or makes an initial premium payment, application fee, or other fee; and again at the time the policy or certificate is issued. This makes clear that the disclosure should be available in writing before, and not after, a prospective enrollee submits an application. Section 3.3602(g)(2) is necessary because Insurance Code §1509.00(2)(a) requires a disclosure form to be provided with a short-term limited-duration policy and application.

New §3.3602(g)(3) provides that the disclosure form must be signed by the enrollee to acknowledge receipt at the time of application. An electronic signature is acceptable if the issuer's procedures comply with Insurance Code Chapter 35.

New §3.3602(g)(1) through (3) are necessary because Insurance Code §1509.002(c) provides that an issuer issuing a short-term limited-duration insurance policy adopt procedures in accordance with the rule to obtain a signed form from the enrollee acknowledging that the enrollee received the disclosure form. Insurance Code §1509.002(c) also provides that the rule must allow for electronic acknowledgment.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received three written comments, and two oral comments. Commenters in support of the proposal with changes were: AARP Texas; American Cancer Society Cancer Action Network, Inc.; American Diabetes Association; American Lung Association; Center for Public Policy Priorities; Children's Defense Fund-Texas; National Association of Social Workers, Texas Chapter; National Multiple Sclerosis Society; The Leukemia & Lymphoma Society; UnidosUS; and Young Invincibles.

Comment on §3.3602. A commenter appreciates the department's commitment to the use of plain language to promote transparency.

Agency Response. The department appreciates the support.

Comment on §3.3602. A commenter cites a study that found that consumers have "significant difficulty in understanding short-term limited-duration plans cost implications." The commenter encourages the department to develop educational resources for short-term limited-duration plans similar to its "Health Insurance Shopping Guide" and to provide the link to the resource on the disclosure form.

Agency Response. The department appreciates the comment and will take it into consideration. The department does agree that it is important to connect consumers with educational resources to improve health insurance literacy. The department declines to develop a shopping guide as part of this rulemaking, since it is outside the scope of Insurance Code §1509.002(a), which requires the Commissioner, by rule, to prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application.

Comment on 3.3602(d)(2). A commenter states that plans sold as renewable should not engage in medical underwriting or deny coverage at renewal.

Agency Response. The department agrees that a fair understanding of the right to renew should not expose an individual to additional underwriting. The department changed §3.3602(d)(2) to clarify that renewal does not permit new underwriting.

Comment on 3.3602(d)(5)(B). A commenter states that while premium rates may not increase based on a change to an individual's health status, other criteria, like occupation and gender, could still be used as factors to modify rates. Another commenter stated that plans sold as renewable should not change the premium rate or policy terms based on individual risk characteristics. A commenter states that the department should provide more explicit guidelines for premium rate and policy changes to protect the value of these products to those consumers who purchase them.

Agency Response. The department agrees that a fair understanding of the right to renew is that renewal should not expose an individual to additional underwriting. The department modified §3.3602(d)(2) to clarify that renewal does not permit new underwriting.

Comment on §3.3602(e). A commenter states that the requirement that all companies selling short-term limited-duration plans must comply with the disclosure forms should remain in the adopted rule. The commenter states that this requirement maintains a level playing field for the benefit of consumers.

Agency Response. The department appreciates the support.

Comment on Figure: 28 TAC §3.3602(e). A commenter states that the heading for the disclosure form ("Is this short-term health insurance plan right for me?"), should remain in the adopted rule. The commenter states that question is at the core of the disclosure form itself.

Agency Response. The department appreciates the support.

Comment on Figure: 28 TAC §3.3602(e). A commenter recommends adding information to the disclosure form that will help the applicant understand any fees in addition to the monthly premium that may be charged for the plan, such as application fees, association membership fees, and miscellaneous administrative fees.

Agency Response. The department declines to add this information to the form at this time, because it appears that current marketing practices provide consumers with sufficient information about how much their coverage will cost. The department will monitor the issue and consider future changes to the rule if complaints are received.

Comment on Figure: 28 TAC §3.3602(e). A commenter recommends that the form have a required space for the name of the insurer, the marketing name of the plan, and the agent's name and license number.

Agency Response. The department agrees in part and modifies the disclosure form to include the plan marketing name and the name of the issuer that is underwriting the coverage above paragraph 1. The department declines to require the agent's name and license number at this time, due to the administrative complexity and cost that would add. The department will continue to monitor this issue. In addition, the department modified paragraph 11 to provide the department's contact information and how to check if an agent has a license.

Comment on Figure: 28 TAC §3.3602(e). A commenter recommends that paragraph 1 of the disclosure use more plain language to describe the differences between ACA plans and short-term plans. The commenter suggested alternate language to state, "ACA plans cover preexisting conditions and comprehensive health benefits such as hospitalization, emergency services, maternity care, preventive care, prescription drugs and mental health and substance use disorder services," or "ACA plans have comprehensive coverage."

Agency Response. The department agrees that paragraph 1 of the disclosure form should use more plain language in its terminology. The department changed paragraph 1 to explain that, unlike ACA plans, a short-term limited-duration plan may not cover all injuries or sicknesses, including any that a prospective enrollee may have before applying. The department also reformatted the information using bullets and added a statement to indicate that short-term plans don't qualify for tax credits and cost-sharing reductions.

Comment on Figure: 28 TAC §3.3602(e). A commenter raises a concern that the language in paragraph 3 concerning an individual's right to renew a plan and protection against health-based

rate increases may blur the lines between short-term limited-duration insurance and qualified health plan coverage.

Agency Response. The department disagrees and declines to make a change to the disclosure form. The language as written accurately describes the protections put in place under §3.3602(d). Paragraph 1 of the form highlights key differences between short-term limited-duration insurance and ACA plans and paragraphs 4, 9, and 12 also clarify how the short-term limited-duration insurance plan is different from an ACA plan.

Comment on Figure: 28 TAC §3.3602(e). Two commenters suggest informing consumers that subsidies may be available for consumers to enroll in an ACA plan.

Agency Response. The department agrees and changed paragraph 1 of the disclosure form to indicate that short-term limited-duration plans are not eligible for federal assistance.

Comment on Figure: 28 TAC §3.3602(e). A commenter states that the word "to" is missing in paragraph 3 between the words "right" and "renew."

Agency Response. The department agrees and added the word "to."

Comment on Figure: 28 TAC §3.3602(e). One commenter recommends including more information on qualifying life events that enable an individual to get an ACA plan, special enrollment periods, and subsidies. The commenter also recommends adding information to better understand about a potential gap in coverage. The commenter recommends language that states "If you want to sign up for a health plan covered by ACA laws: You can sign up for another plan only during open enrollment or if you have a qualifying life event, such as losing coverage from a job or having a baby. You may be able to get extra help paying for premiums and out-of-pocket costs that are not available with short-term plans. The next open enrollment dates for ACA plans are: (dates listed). When you sign up for a plan during HealthCare.gov open enrollment dates, your insurance coverage will start on the following January 1. To find out if you have a qualifying life event (such as losing coverage through your job, parent or spouse or changes to your family like getting married or having a baby) talk to your insurance agent or go to HealthCare.gov. The end of this short-term plan is not a qualifying life event, so you may have to wait until the next open enrollment period to sign up for an ACA plan."

Agency Response. The department agrees that additional information about applying for an ACA plan outside of the open enrollment period is important information for a consumer to understand. The department changed paragraph 4 of the disclosure form to provide information on how to find out about a qualifying life event and examples of those events.

Comment on Figure: 28 TAC §3.3602(e). Two commenters emphasize the importance of helping consumers understand the risk of balance billing in indemnity plans. Another commenter states the importance of balance billing information with respect to "(m) primary care" and a "(n) specialist office visit." One commenter also states that the first and third answers fail to provide consumers with information regarding the fact that their provider or specialty facility may be entirely out-of-network, leaving the consumer with the responsibility of paying the entire cost of care. One commenter recommends language for paragraph 8 in the disclosure form that states, "No. Your coverage is the same, no matter what doctor/provider you use. No providers have agreed in advance to accept the reimbursement from this short-term

plan as payment in full. Doctors/providers can bill you directly for any amount the plan does not pay."

Agency Response. The department agrees that it's important that consumers understand the potential of balance billing in an indemnity plan and changed the information in Section 8. Other disclosure requirements regarding balance billing apply to short term plans that constitute preferred provider benefit plans (PPOs) and exclusive provider benefit plans (EPOs) under 28 TAC §3.3705 and Insurance Code Chapters 1301 and 1456.

Comment on Figure: 28 TAC §3.3602(e). A commenter states that Section 8 of the disclosure form requires insurers to state whether a provider network exists for a given plan, but it does not tell consumers where to look for more information about the comprehensiveness of the networks. The commenter states that the department should require insurers to make information about provider networks available prior to purchase, which could include a link to their online provider-lookup tool. Two commenters recommend requiring issuers to include information about provider networks and the URL to the online provider directory within the disclosure form.

Agency Response. The department agrees that this is important information for a consumer purchasing a short-term limited-duration plan and notes that Insurance Code §1451.505 requires health plans to provide an online directory and to include a link to the directory in the electronic summary of benefits and coverage. Since federal law does not require a short-term limited-duration plan to provide a summary of benefits and coverage, it is appropriate to include the network information in this disclosure document.

Comment on Figure: 28 TAC §3.3602(e). A commenter expresses concern for the question asking about the maximum amount the plan will pay for services. The commenter explains that this question can be misleading to consumers. As an example, the commenter explains that many short-term limited-duration plans may have a maximum cap of \$2 million for covered services, which will sound reasonable to a consumer. However, the commenter states that it is unlikely that any consumer would ever reach that cap due to the inadequacy of the plan's benefit design and likelihood that a consumer would pay for most of their care out-of-pocket if diagnosed with a serious illness.

Agency Response. The department declines to make a change to paragraph 6, because this information is required by Insurance Code §1509.002(b)(5). The information in the chart in paragraph 9 provides more detailed information about plan limits and the department clarified that the chart must include any applicable benefit maximums.

Comment on Figure: 28 TAC §3.3602(e). One commenter states that it should be clear to the consumer whether the deductible applies for the term of the plan or on an annual basis. The commenter also states that consumers should be informed if the deductible resets during the plan's duration.

Agency Response. The department agrees and clarified the instructions to state that if the deductible can reset more frequently than annually, this must be disclosed.

Comment on Figure: 28 TAC §3.3602(e). A commenter raises concern about consumers understanding that in some cases the consumer would be responsible for the entire cost of care if their provider, or specialty facility, is entirely out-of-network.

Agency Response. The department declines to make a change. The EPO statement makes clear that the plan covers care only

from in-network providers, with the exception of emergency care and some other situations.

Comment on Figure: 28 TAC §3.3602(e). A commenter recommends that insurers be instructed to include any specific dollar cap on per-service reimbursement within the table. For example, if a plan will cover only \$100 per day for a hospital stay and cover only a total of \$1,500 per confinement, the table must indicate that.

Agency Response. The department agrees and modified the instructions in the chart to clarify that applicable limitations include benefit maximums.

Comment on Figure: 28 TAC §3.3602(e). A commenter states that several short-term limited-duration plans only cover prescription drugs during an inpatient hospitalization, and recommends that the language for row (o) clarify that the coverage in question is for outpatient prescription drugs. Two commenters recommend requiring formulary information, including a URL link to the formulary, to be included in the chart. One commenter recommends that if the plan uses a discount card or similar model, the consumer must be informed that they may be responsible for out-of-pocket costs.

Agency Response. The department agrees and expands the description for row (o) to read "drugs ordered by your doctor (outpatient prescription drugs)." The department clarifies that if the outpatient drug coverage is limited by a formulary, that information must be stated, and a link to the formulary must be provided. Since a discount card is not insurance coverage, the instructions clarify that it should not be represented as such, but the availability of the discount plan may be stated.

Comment on Figure: 28 TAC §3.3602(e). A commenter states that, although short-term limited-duration plans do offer prescription drug coverage, the cap can be as low as seven thousand dollars for the duration of the plan. The cost of a drug for cancer treatment could easily reach that cap in a month. The commenter recommends requiring issuers to provide dollar amounts and certain types of contextual details in the disclosure plan.

Agency Response. The department declines to make this change to row (o) in the chart. The disclosure form requires issuers to explain any applicable limitations, exceptions, or other important information about the nature of coverage. The department added clarification to the instructions for the chart explaining that applicable limitations include benefit maximums.

Comment on Figure: 28 TAC §3.3602(e). A commenter references paragraph 9 of the disclosure form, which states that "[w]hile ACA plans cover all listed benefits with few limits, this plan may limit coverage for some types of care." The commenter states that considering that every short-term limited-duration plan on the market in Texas limits some aspect of coverage, and says the department should change "may limit" to "limits."

Agency Response. The department agrees with the recommendation and has modified paragraph 9 by replacing "may limit" with "limits."

Comment on Figure: 28 TAC §3.3602(e). A commenter recommends requiring issuers to include cost-sharing information in the chart for each benefit. The commenter notes that as proposed, including cost-sharing information in the disclosure document is optional.

Agency Response. The department declines to require inclusion of cost-sharing information, since issuers may use other docu-

ments to describe the coverage. However, the department did change paragraph 9 to inform the consumer that they may ask for this information if it is not included in the chart. Issuers are also permitted to include cost-sharing information and to combine the disclosure form with the outline of coverage under new 28 TAC §3.3602(f)(4) and (5).

Comment on Figure: 28 §3.3602(e), §3.3602(g)(2), and (3). A commenter states support for the requirement to provide the disclosure form to the prospective enrollee in writing before the individual completes an application or makes an initial payment. The commenter recommends that either, as part of the affirmation that a consumer read and understood the disclosure form, or separately, a consumer should affirm that they received the disclosure form in writing before they completed the application or made any payment.

Agency Response. The department appreciates the support. The department also agrees about the affirmation and changed paragraph 10 of the disclosure form to include information about receiving the disclosure form in writing before completing the application or making any payment.

Comment on Figure: 28 TAC §3.3602(e). A commenter urges the department to include the department's contact information on the disclosure form so that consumers know who to contact if they experience problems with the plan.

Agency Response. The department agrees with the recommendation and has modified the disclosure form to include the department's consumer help line phone number and website address under paragraph 11.

Comment on Figure: 28 TAC §3.3602(e). A commenter requests that the department ensure language access as part of the disclosure rule, by: translating the final disclosure to Spanish and requiring insurers to complete and make the disclosure available in Spanish, at a minimum; on the English-language form, including a short note in Spanish that the consumer may request the alternate Spanish-language disclosure; and requiring agents who are communicating with a consumer in a language other than English to automatically provide the disclosure in that language without the consumer having to request it, if the department has made a disclosure form in that language available.

Agency Response. The department agrees in part and has modified the disclosure to include a statement in Spanish and English before the signature line that states, "Don't sign this document if you don't understand it." The department also encourages issuers to produce and file translated versions of the form and to ensure agents provide appropriate assistance to consumers. Consistent with §3.4004(h), foreign language versions of a previously approved form can be filed on an exempt basis.

Comment on §3.3602(f)(1). Two commenters state that the requirement of one disclosure form for each plan option should remain. A commenter states that this requirement will help reduce confusion as consumers compare products.

Agency Response. The department appreciates the support.

Comment on §3.3602(f)(3). A commenter states that the requirement in §3.3602(f)(3) providing that if a carrier modifies the disclosure form it must clearly identify and explain changes to facilitate the department's review should remain.

Agency Response. The department appreciates the support.

Comment on §3.3602(f)(3). A commenter raises concern that the ability of issuers to modify the disclosure form could lead to

confusion for consumers. The commenter requests that the department remove the modification provision or, if the provision must be kept, to allow form modifications only during a predetermined annual period, to require public disclosure of requested modifications, and to clarify the factors to be used in evaluating modification requests.

Agency Response. The department declines to make a change. Since the form must be filed for review, the department can ensure that modifications only serve to more accurately describe the coverage, and do not create confusion for consumers.

Comment on §3.3602(f)(5). A commenter states that the requirement in §3.3602(f)(5) providing the required order of a combined disclosure and outline of coverage should remain.

Agency Response. The department appreciates the support.

Comment on §3.3602(f)(5). A commenter recommends clarifying the title from the short-term plan disclosure on any combined document.

Agency Response. The department agrees to make a change, and it has changed the instructions in §3.3602(f)(5)(A) for combining the forms, to include the title, the plan marketing name, and name of the issuer. This change clarifies that this information must precede paragraph 1 of the outline of coverage.

Comment on §3.3602(g)(1). A commenter states that the requirement to file the disclosure form for department review before use should remain.

Agency Response. The department appreciates the support.

Comment on §3.3602(g)(2). A commenter states that the requirement to provide a disclosure form in writing to a prospective enrollee before completing an application or paying any fees should remain.

Agency Response. The department appreciates the support.

Comment on §3.3602(g)(3). A commenter states that the requirement for the enrollee's signature on the disclosure at application should remain.

Agency Response. The department appreciates the support.

STATUTORY AUTHORITY. The Commissioner adopts 28 TAC §3.3602 under Insurance Code §§1201.006, 1201.101(a), 1201.108(b), 1202.051, 1251.008, 1509.002, and 36.001.

Insurance Code §1201.006 provides that the Commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201.

Insurance Code §1201.101(a) provides that the Commissioner adopt reasonable rules establishing specific standards for the content of an individual accident and health insurance policy and the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale.

Insurance Code §1201.108(b) provides that the Commissioner prescribe the format and content of an outline of coverage required by §1201.107.

Insurance Code §1202.051(d) provides that the Commissioner adopt rules necessary to implement §1202.051 and to meet the minimum requirements of federal law, including regulations.

Insurance Code §1251.008 provides that the Commissioner may adopt rules necessary to administer Chapter 1251.

Insurance Code §1509.002 provides that the Commissioner by rule prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application, that the disclosure form prescribed by rule may include any other information the Commissioner determines is important for a purchaser of a short-term limited-duration insurance policy, and that the rule must allow for electronic acknowledgement.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§3.3602. Requirements for Short-Term Limited-Duration Coverage.

(a) The purpose of this section is to define short-term limited-duration insurance and address requirements for short-term limited-duration coverage. This section applies to any individual or group accident and health insurance policy or certificate issued under Insurance Code Chapters 1201 or 1251.

(b) For the purposes of Chapters 3, 21, and 26 of this title, "short-term limited-duration insurance" has the meaning given in Insurance Code §1509.001.

(c) An individual policy or group certificate of short-term limited-duration insurance must provide benefits consistent with the minimum standards for the type of coverage offered.

(d) Short-term limited-duration coverage, including individual policies and group certificates:

(1) may not be marketed as guaranteed renewable;

(2) must be marketed either as nonrenewable, or renewable (without new underwriting) at the option of the policyholder or enrollee, if the enrollee contributes to the premium;

(3) must clearly state the duration of the initial term and the total maximum duration including any renewal options;

(4) may not be modified after the date of issue, except by signed acceptance of the policyholder or the enrollee, if the enrollee contributes to the premium; and

(5) if coverage is renewable, a short-term limited-duration individual policy or group certificate must:

(A) include a statement that the enrollee has a right to continue the coverage in force by timely payment of premiums for the number of terms listed;

(B) include a statement that the issuer will not increase premium rates or make changes in provisions in the policy, or certificate, on renewal based on individual health status;

(C) if applicable, include a statement that the issuer retains the right, at the time of policy renewal, to make changes to premium rates by class; and

(D) include a statement that the issuer, at the time of renewal, may not deny renewal based on individual health status.

(e) An issuer offering short-term limited-duration insurance must include an accurate written disclosure form that is consistent with the form and instructions prescribed in Figure: 28 TAC §3.3602(e) and the requirements of this section.
Figure: 28 TAC §3.3602(e)

(f) In creating a disclosure form, issuers must follow all instructions provided in this subsection:

(1) The disclosure must be produced for each plan option that the issuer makes available and reflect the specific terms of the plan.

(2) The disclosure form must accurately represent the short-term limited-duration coverage being provided.

(3) If the disclosure form provided in Figure 28 TAC §3.3602(e) does not accurately represent the plan being offered, the issuer may modify the form as necessary. When filing the form with the department, the issuer must clearly identify any changes made and explain the reason for modifying the form.

(4) The chart under disclosure form paragraph (9) may be supplemented to include cost-sharing information for each benefit.

(5) The disclosure form provided in Figure 28 TAC §3.3602(e) (the disclosure form) may be combined with the outline of coverage required under §3.3093(4) of this title (the outline of coverage) only if the combined disclosure form and outline of coverage is assembled and combined in the following order:

(A) "Is this short-term health insurance plan right for me?" followed by the plan marketing name, name of issuer, and paragraph (1) of the outline of coverage;

(B) paragraph (2) of the outline of coverage is replaced with paragraphs (1) through (8) of the disclosure form;

(C) paragraph (3) of the outline of coverage is combined with paragraph (9) of the disclosure form, using as a minimum, the information contained in the chart in paragraph (9) of the disclosure form;

(D) paragraph (4) of the outline of coverage;

(E) paragraph (5) of the outline of coverage may be removed, as it is addressed in paragraph (3) of the disclosure form;

(F) paragraph (6) of the outline of coverage; and

(G) paragraphs (10), (11), and (12) of the disclosure form.

(g) A disclosure form under this section must be:

(1) filed with the department for review before use, consistent with filing procedures in Subchapter A of this chapter;

(2) provided in writing to a prospective enrollee:

(A) before the individual completes an application or makes an initial premium payment, application fee, or other fee; and

(B) at the time the policy or certificate is issued; and

(3) signed by the enrollee to acknowledge receipt at the time of application. An electronic signature is acceptable if the issuer's procedures comply with Insurance Code Chapter 35.

The agency certifies that legal counsel has reviewed the 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 27, 2019.

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 124. CARRIERS: REQUIRED NOTICES AND MODE OF PAYMENT

28 TAC §124.2, §124.3

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to §124.2 (concerning General Rules for Written Communications to and from the Commission) and §124.3 (concerning Investigation of an Injury and Notice of Denial/Dispute). The proposed amendments were published on October 25, 2019, in the *Texas Register* (44 TexReg 6214). The amendments are adopted with changes. These rules will be republished.

REASONED JUSTIFICATION

These rules are adopted as required under Senate Bill (SB) 2551, 86th Legislature (2019). Senate Bill 2551 amended both the Workers' Compensation Act, Labor Code Title 5 (Act), and Government Code Chapter 607, Subchapter B (Subchapter B) (relating to Diseases and Illnesses Suffered by Firefighters, Peace Officers, and Emergency Medical Technicians (EMTs) (collectively "first responders")). A separate bill, SB 1582, added peace officers to the list of first responders covered by Subchapter B. As these adopted rules will apply uniformly to all first responders covered by Subchapter B, no additional rule-making is required to implement SB 1582. These amendments address both an insurance carrier's obligation to investigate and the notification process for presumption claims for first responders. These amendments are adopted concurrently with amendments to Chapter 180, which address enforcement. The reasoned justifications for the amendments to Chapters 124 and 180 are meant to be read together, and each is incorporated by reference into the other.

Subchapter B applies to certain occupational diseases or illnesses suffered by first responders who meet the qualifications set forth. Subchapter B applies to first responders who received a physical examination upon or during employment that did not reveal evidence of the illness or disease for which benefits or compensation is sought, who have been employed for five years or more as a first responder, and who seek benefits or compensation for a disease or illness covered by the subchapter that is discovered during employment as a first responder. Gov't Code §607.052(a). The diseases and illnesses covered by Subchapter B are smallpox, reactions to vaccinations, tuberculosis or other respiratory illness, cancer (firefighters and EMTs only), and acute myocardial infarction or stroke. §§607.053-607.056.

The presumptions under Subchapter B do not apply to a determination of a survivor's eligibility for benefits under Government Code Chapter 615 (relating to Financial Assistance to Survivors of Certain Law Enforcement Officers, Fire Fighters, and Others), in a cause of action brought in court except for judicial review of a grant or denial of employment-related benefits or compensation, to a determination regarding benefits or compensation under a life or disability insurance policy. Furthermore, a presumption does not apply if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and if either the first responder is or has been a user of tobacco or if their spouse has, during the marriage, smoked tobacco. §607.052(b). The presumptions under Subchapter B ap-

ply to a determination of whether a first responder's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation. §607.057.

Senate Bill 2551 amended Subchapter B to direct that four specified types of cancer and cancers originating in seven specified organs might trigger the presumption under Government Code §607.055. Senate Bill 2551 also amended the requirements for rebutting a presumption. A presumption can be rebutted through showing, by a preponderance of the evidence, that a risk factor, accident, hazard, or other cause not associated with an individual's service as a first responder was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. §607.058(a). A rebuttal must include a statement that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a first responder was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. §607.058(b).

Senate Bill 2551 also amended the Act to provide an insurance carrier with an additional option at the 15th day after receiving written notice of a first responder's disability or death for which a presumption may be applicable under Subchapter B. Labor Code §409.021(a-3). Generally, at the 15th day, an insurance carrier must either begin the payment of benefits or notify the injured employee and DWC in writing of its refusal to pay. §409.021(a). An insurance carrier now has the option, at the 15th day, of providing a first responder and DWC with a notice, referred to in these rules as a "Notice of Continuing Investigation," that describes all steps taken by the insurance carrier to investigate the disability or death before notice was given and the information the insurance carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. §409.021(a-3).

The bill also amended Labor Code §415.021 to require that the commissioner consider whether an injured employee cooperated with the insurance carrier's investigation of the claim and whether the employee timely authorized access to relevant medical records when determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided a Notice of Continuing Investigation. The commissioner shall also consider whether the insurance carrier conducted an investigation of the claim, applied the statutory presumptions under Subchapter B, and expedited medical benefits under Labor Code §504.055 (relating to Expedited Provision of Medical Benefits for Certain Injuries Sustained by First Responder in Course and Scope of Employment).

An insurance carrier's existing duty to investigate a claim is described under the Act. Labor Code 409.021 establishes the foundation for an insurance carrier's duty to investigate a claim prior to a refusal to pay benefits. Section 409.021(a-3) specifically provides that a Notice of Continuing Investigation must "describe all steps taken by the insurance carrier to investigate the injury before the notice was given and the evidence that the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury." Section 409.021(c) provides that an insurance carrier has a right to continue to investigate the compensability of an injury during the 60-day period. Section 409.021(d) provides that an insurance carrier may reopen the issue of compensability if evidence is later found that could not be reasonably discovered earlier. This language plainly re-

flects a recognized obligation to reasonably investigate a claim in a timely manner. Upon receipt of written notice of injury, an insurance carrier shall conduct an investigation relating to the compensability of the injury, the insurance carrier's liability for the injury, and the accrual of benefits. A notice of refusal to pay benefits must specify the reasonable grounds for the refusal. §409.022(a) and (c).

If an insurance carrier intends to rely on information discovered after the denial of a claim to support a reason for denial not described in the notice of denial, the insurance carrier must show that the information could not have been reasonably discovered at an earlier date. §409.022(b). When reviewing a health care provider's claim, an insurance carrier can request additional documentation necessary to clarify the provider's charges and, when disputing payment, an insurance carrier must submit a report that sufficiently explains the reasons for the reduction or denial of payment. §408.027(b) and (e). An insurance carrier commits an administrative violation for any of 22 specified actions, including failing to process claims promptly and in a reasonable and prudent manner, misrepresenting the reason for not paying benefits or terminating or reducing payments of benefits, converting a claim if the evidence clearly indicates liability, and failing to comply with the Act. §415.002(a). Conversely, an insurance carrier is authorized to allow an employer to assist in the investigation and evaluation of a claim. §415.002(b)(2). The unambiguous meaning of these statutory provisions is that an insurance carrier is expected to conduct a reasonable investigation to establish grounds for refusing to pay benefits. Rule 124.3(a) sets forth the procedures for carrying out these statutory requirements for investigating claims.

As noted by the Texas Supreme Court in *Texas Mutual Insurance Company v. Ruttiger*, 381 SW3d 430, 448-449 (Tex. 2012), an insurance "carrier has statutory and regulatory duties to promptly conduct adequate investigations and reasonably evaluate and expeditiously pay workers' legitimate claims or face administrative penalties." The court further noted, "The Act's requirements include time limits for payment of benefits, giving notice of a compensability contest and the specific reason for the contest, and necessarily subsume the requirement of proper investigation and claims processing." *Id.* at 445 (citing §409.021(a)). The court observed that "[k]ey parts of the [workers' compensation] system are the amount and types of benefits, the delivery systems for benefits, the dispute resolution processes for inevitable disputes that arise among participants, the penalties imposed for failing to comply with legislatively mandated rules, and the procedures for imposing such penalties." *Id.* at 450. The court recognized that DWC's pervasive authority to regulate and penalize insurance carriers for inadequate investigations eliminated the need for private causes of action. *Id.* at 449-450.

Insurance carriers have additional investigative responsibilities specific to designated claims advanced by first responders or their beneficiaries. As provided by SB 2551, an insurance carrier is relieved of the duty to either initiate payment or provide notice of its refusal to pay within 15 days of receiving written notice of a qualifying injury to a first responder, if it provides a Notice of Continuing Investigation "that describes all steps taken by the insurance carrier to investigate the injury before notice was given and the evidence that the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury." §409.021(a-3). An insurance carrier's notice of refusal to pay benefits must explain why a presumption under Subchapter B, does not apply and must describe the evidence that the

carrier reviewed in making that determination. §409.022(d). In determining whether to assess an administrative penalty for a claim involving a first responder, the commissioner must consider whether "the insurance company conducted an investigation of the claim [and] applied the statutory presumption under Subchapter B." §415.021(c-2).

For claims concerning first responders, Subchapter B provides elements necessary to qualify for a presumption under the subchapter, as well as a disqualification for tobacco use. Gov't Code §607.052(a) and (b)(4). At a later hearing, an insurance carrier may rebut any presumption established under Subchapter B "through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter, peace officer, or [EMT] was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred." §607.058. These provisions establish the evidentiary standard applicable to rebuttal of the presumption and require that an insurance carrier investigate a first responder's qualification for a presumption under Subchapter B.

The Legislature has directed that DWC adopt rules necessary to implement SB 2551 no later than January 1, 2020. The implementation of SB 2551 will provide an amended process for claim notification including an allowance for issuance of a Notice of Continuing Investigation. Upon issuance of a Notice of Continuing Investigation, an insurance carrier will have more time to investigate a claim before taking action. The adopted amendments also describe an insurance carrier's obligation to investigate when it receives notice of an injury for which a presumption may apply on a claim and the process the carrier must follow when investigating a presumption claim under Subchapter B.

The changes in law made by SB 2551 apply to a claim for benefits filed on or after June 10, 2019, the effective date of SB 2551. Section 8 of SB 2551 provides that the amendments to Government Code §607.055 and §607.058 apply only to a claim for benefits filed on or after June 10, 2019. Section 10 of SB 2551 provides that Labor Code §504.053(e)(1) applies only to administrative violations that occur filed on or after June 10, 2019. The amendments will not apply to a claim for benefits filed before June 10, 2019.

DWC posted an informal draft of these amendments on its website for comment and hosted a stakeholder meeting on Wednesday, August 21, 2019. Subsequently, and in response to the comments received, DWC published proposed amendments in the *Texas Register* and held a public hearing on Wednesday, November 20, 2019. Section 409.021(a-3), as amended by SB 2551, directs that an insurance carrier need not comply with the established 15-day pay or deny obligation if it issues a described notice. As adopted, Rule 124.2 identifies this notice as a Notice of Continuing Investigation and requires that insurance carriers use a plain language format and no less than a 12-point font.

The adopted amendments to Rule 124.2 add subsections (f) - (h) to establish the notice requirements provided for under §409.021(a-3). Subsection (f) details the choice of actions that an insurance carrier may take during the first 15 days following receipt of a written notice of injury. Subsection (f)(3) provides that notice must be provided to both the claimant and DWC, as required under §409.021(a-3). This requirement is also consistent with DWC's responsibility to monitor the workers' compensation system, as set forth in Chapter 414 (relating to Enforcement of Compliance and Practice Requirements).

Subsection (g) clarifies that a "claim for benefits" means the first written notice of injury as provided in Rule 124.1 (concerning Notice of Injury). A written notice of injury can include DWC Form-001, *Employer's First Report of Injury or Illness*, or if that form has not been filed, any other written communication, regardless of the source, which informs the carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury, and information which asserts the injury is work related. The filing of a DWC Form-041, *Employee's Claim for Compensation for a Work-related Injury or Occupational Disease*, or a DWC Form-042, *Claim for Workers' Compensation Death Benefits*, by an injured employee or their beneficiary would fulfill this requirement if it is the first written notice of injury.

Subsection (h) describes what must be included in a Notice of Continuing Investigation. The elements of a Notice of Continuing Investigation provide an outline for what constitutes a reasonable investigation and the relevant and necessary information for that investigation. An insurance carrier may request that an injured employee provide releases required to obtain information and specified information or documents within their custody or control reasonably believed to be necessary to complete its investigation of the compensability of an injury. An insurance carrier must continue to pursue its own investigation, seeking to obtain information directly from health care providers, employers, and other sources. This is consistent with an insurance carrier's existing duty under law to investigate a claim as discussed above. Senate Bill 2551 did not create any additional duty for an injured employee to respond to production requests from an insurance carrier.

Subsection (h)(3) provides a description of information or documents that may not be identified by the insurance carrier as reasonably necessary to complete its investigation through a Notice of Continuing Investigation, such as a request for additional diagnostic testing, mental health records, generic requests, or requests for records that are not directly related to either the disease or illness or eligibility for a statutory presumption under Subchapter B. The workers' compensation system provides other opportunities for an insurance carrier to obtain additional diagnostic testing. Mental health records have no apparent relevance to an investigation involving any of the diseases or illnesses identified under Subchapter B. As described under §409.021(a-3), the Notice of Continuing Investigation provides an insurance carrier with the opportunity to identify the claim-specific information that the insurance carrier reasonably believes is necessary to complete its investigation of the compensability of an injury.

Subsection (j) describes additional requirements for an insurance carrier when issuing a denial notice on a claim where the insurance carrier issued a Notice of Continuing Investigation. Subsection (j)(2) clarifies if the insurance carrier concludes that a statutory presumption applies, but still denies the claim, the notice of denial must include a statement explaining why and describing the claim-specific evidence or documentation reviewed prior to issuance of the notice. The notice of denial should demonstrate a rational conclusion based on claim-specific evidence or documentation as justification for denial of the claim for benefits. These requirements are consistent with §409.022 and §415.021.

Subsection (s) establishes minimum standards for plain language notices including that a minimum font size of 12-point be used in all plain language notices. The requirement for a

12-point font is consistent with other guidelines and requirements for readability and plain language. For example, the Texas Department of Insurance requires that a notice of network requirements and employee information form must "be printed in not less than 12-point type." 28 TAC §10.63; see also Federal Plain Language Guidelines (May 2011), available at plainlanguage.gov. The requirements for 12-point font will apply to all plain language notices. The requirements in Subsection (s) will go into effect on April 1, 2020, providing insurance carriers with additional time to update their automated systems.

Throughout Rule 124.2, additional non-substantive editorial changes are adopted to correct errors of grammar and punctuation, clarify wording, and to conform to the agency's style guidelines.

The amendments to Rule 124.3(a)(1-4) address the use of the Notice of Continuing Investigation as now allowed under §409.021(a-3). As provided by SB 2551, by issuing a timely Notice of Continuing Investigation, an insurance carrier is allowed additional time to investigate a claim before deciding to pay or deny a claim on or before the 60th day from written notice of injury. §409.021(a-3). Under Rule 124.3(a)(4), if a Notice of Continuing Investigation is issued after the 15th day from receipt of written notice of injury, the insurance carrier is liable for accrued or payable income and medical benefits prior to a timely denial.

The amendments to Rule 124.3 delete penalty provisions in subsection (a)(4)(A-C) in order to conform with House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. House Bill 7 amended Labor Code §415.021 to delete a limitation that an administrative penalty should not exceed \$10,000. Section 415.021 permits DWC to assess administrative penalties of up to \$25,000 per violation in addition to any other sanctions authorized by the Act. Section 415.021 also states that each day of noncompliance constitutes a separate violation and lists the factors that DWC must use when determining penalty amounts. Additionally, §415.025 provides that a reference in the Labor Code or other law to a particular class of violation or administrative penalty must be construed as a reference to an administrative penalty, and except as otherwise provided in the Act, an administrative penalty may not exceed \$25,000 per day per occurrence, and each day of noncompliance constitutes a separate violation in accordance with §415.021.

The amendments to subsections (d) and (e) are required to provide for the use of a Notice of Continuing Investigation in claims involving death or burial benefits. Subsection (d) is amended to clarify, for purposes of death benefits, when an insurance carrier may issue a Notice of Continuing Investigation in accordance with the provisions of §124.2(f) and §124.3. Subsection (e) provides that, notwithstanding the requirements of §132.13 (concerning Burial Benefits), when an insurance carrier issues a Notice of Continuing Investigation, the insurance carrier must either pay or deny a claim for burial benefits within seven days from the initiation of benefits or the issuance of a notice of denial.

The transition language in prior subsection (f) is now obsolete and has been deleted as all claims prior to September 1, 2003, have exceeded the 15 days provided in subsection (a).

Subsection (g) provides that if an insurance carrier receives written notice of injury for a disease or illness identified by Subchapter B, it is required to investigate the applicability of the statutory presumption in addition to investigating the compensability of the

injury, liability for the injury, and the accrual of benefits. Subsection (g)(1) provides that a claimant is not required to expressly claim the applicability of a statutory presumption in order for the statutory presumption to apply.

As described in subsection (g)(2), a presumption under Subchapter B is claimed to be applicable upon a first responder's written notice of injury for a disease or illness identified by Subchapter B. As a written notice of injury constitutes a claim for any presumption under Subchapter B, an insurance carrier has the duty of investigating whether a presumption does or does not apply to an individual claim. This is consistent with the provisions of Government Code §607.057 and §607.058 and Labor Code §409.021 and §415.021, as well as with an insurance carrier's duty to investigate a claim as discussed above. Subsection (g)(2) is also consistent with the Legislature's intent that DWC "effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system." Labor Code §402.021 (relating to Goals; Legislative Intent; General Workers' Compensation Mission of Department).

As described in subsection (g)(3), whether a presumption does or does not apply has no direct bearing on issues relating to compensability, liability for the injury, and the accrual of benefits. For instance, if an injured employee is a smoker, the employee nonetheless may have suffered a compensable injury even if the presumption under Government Code §607.054 does not apply. Accordingly, as set forth in subsection (g)(3), an insurance carrier has a continuing obligation to conduct a reasonable investigation even when a presumption does not apply or may be rebuttable.

Throughout Rule 124.3, additional non-substantive editorial changes are adopted to correct errors of grammar and punctuation, clarify wording, renumber subsections, and to conform to the agency's style guidelines.

Finally, SB 2551 required that DWC adopt rules necessary to implement the bill. DWC adopts these amendments to implement SB 2551.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Texas Mutual Insurance Company and the Office of Injured Employee Counsel submitted comments offering general support of the implementation of SB 2551 and against the adoption of certain specific provisions.

The City of San Antonio, Insurance Council of Texas, and Liberty Mutual Insurance Company offered comments against specific statements in the preamble and rule provisions.

General Comments

Comment: Two commenters offered general support for the proposed rules.

Response: DWC appreciates the supportive comments.

Comment: One commenter challenged the following statement in the preamble regarding Labor Code §409.022(b): "If an insurance carrier intends to rely on evidence discovered after the denial of a claim, the insurance carrier must show that the evidence could not have been reasonably discovered at an earlier date." The commenter characterized this statement as an incorrect evidentiary bar and stated that §409.022(b) does not bar new evidence based on different arguments that may be raised

to address the certified issues and that failure to comply with such requirements is an administrative violation.

Response: DWC agrees in part. Section 409.022(b) reads "The grounds for the refusal specified in the notice [of refusal to pay benefits] constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date" (emphasis added). Statutes are to be read according to their plain meaning, "giv[ing] effect to the Legislature's intent as expressed by the language of the statute." *State Office of Risk Management v. Martinez*, 539 SW3d 266, 270 (Tex. 2017), quoting *City of Rockwell v. Hughes*, 246 SW3d 621, 625 (Tex. 2008); see also Code Construction Act, Government Code §§311.021, 311.023. The plain meaning of §409.022(b) is that the grounds for refusing to pay benefits is the only basis for a defense of compensability in a subsequent proceeding, "unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date." The Legislature expanded the basic rules for a notice of refusal to pay benefits in SB 2551 by adding §409.021(a-3) and §409.022(d-1) to provide for the Notice of Continuing Investigation. Section 409.021(a-3) provides that "a notice ... describes all steps taken by the insurance carrier to investigate the injury before the notice was given and the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury."

DWC does, however, recognize the need to clarify this statement from the preamble. So, it has been revised to note that "[i]f an insurance carrier intends to rely on information discovered after the denial of a claim to support a reason for denial not described in the notice of denial, the insurance carrier must show that the information could not have been reasonably discovered at an earlier date." During the dispute resolution process, parties have the opportunity to continue to investigate and develop evidence in support of stated reasons for denial.

Comment: One commenter asked DWC to address an apparent conflict between Labor Code §409.021(a-3), as added by SB 2551, and §408.027 (relating to Payment of Health Care Provider) to reconcile the 60 days an insurance carrier is allowed to investigate a claim under §409.021(a-3) with the requirement that an "insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the carrier of the provider's claim" in §408.027. The commenter recommended that DWC read the requirements of §409.021(a-3) to override the requirements of §408.027, arguing that the former provision is both more specific in nature and more recently enacted. The commenter also requested that DWC add language to allow an insurance carrier an additional 45 days to process a medical bill following the 60 days provided through issuance of a Notice of Continuing Investigation.

Response: DWC appreciates the comment. The statutes referenced by the commenter can be reconciled. The statutorily mandated time frames have different triggers and run independently. The 60 days to investigate a claim under §409.021(a-3) is measured from the first written report of injury. Under Rule 124.1, first written report of injury could take several forms, including the employer first report of injury, notification to an insurance carrier by DWC, or other communications, including a medical bill. The 45 days to process a medical bill under §408.027 is triggered by receipt of a complete medical bill from a health care provider.

Insurance carriers are not required to take the full time allowed. Currently, insurance carriers may process and make payments for some medical services while they continue to investigate a claim for compensability. For network claims under Insurance Code Chapter 1305 (relating to Workers' Compensation Health Care Networks), insurance carriers have an existing duty to notify health care providers of compensability denials and must pay for medically necessary services that are provided to an injured employee before notification of a compensability dispute.

If DWC were to accept the commenter's suggestion, that a medical bill need not be paid until 45 days after a decision to initiate benefits, it would conflict with the Legislative intent expressed in §408.027. Under that scenario, a health care provider might wait up to 105 days for a medical bill to be processed by an insurance carrier. That would clearly contradict the prompt payment intent of §408.027. Statutes are to be read as a whole, giving effect to every part. *Railroad Comm'n of Texas v. Texas Citizens for a Safe Future and Clean Water*, 336 SW3d 619, 628 (Tex. 2011). In a complex administrative scheme, such as the workers' compensation system, deference is to be granted to an agency's construction of the statute as long as that construction is reasonable and in alignment with the statute's meaning. *Id.* at 629-630; see *Martinez*, 539 SW3d at 270-271. No change was made in response to this comment.

§124.2

Comment: One commenter said DWC exceeded its statutory authority by equating "claim for benefits" with the insurance carrier's first written notice of injury, noting that "claim" is an affirmative act. The commenter further argued that the definition of "claim for benefits" in §124.2(g) exceeded the statutory authority, noting that "claim for benefits" was not previously defined in either the Act or Subchapter B. The commenter noted that Merriam-Webster's definition of "claim" as an affirmative act is more analogous to §409.003, and as such, Subchapter B claims should have a different trigger than all other workers' compensation claims.

Response: DWC appreciates the comment. The provision for a Notice of Continuing Investigation created by SB 2551 clearly attaches to receipt of the written notice of injury. Section 402.00128 describes the general powers and duties of the commissioner, including assessing and enforcing penalties and prescribing the form, manner, and procedure for the transmission of information to DWC. Section 402.061 provides that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Act. Furthermore, the Texas Supreme Court has held that "an agency's interpretation of a statute it is charged with enforcing is entitled to 'serious consideration,' so long as the construction is reasonable and does not conflict with the statute's language" and courts should defer to an agency's interpretation of a statute it is charged with enforcing. *Railroad Comm'n*, 336 SW3d at 624. An agency, such as DWC, with expertise in a certain area is usually granted latitude in the methods used to accomplish its administrative functions. *Mid-Century Insurance Co. v. Texas Workers' Compensation Comm'n*, 187 SW3d 754, 757-758 (Tex. App. - Austin 2006).

Under the Act and DWC rules, specifically §124.1, an insurance carrier must initiate claim processing upon receipt of notice of an injury. A notice of injury may take the form of an employer's first report of injury, notification from DWC, or any other communication, regardless of source, which fairly informs the carrier of pertinent information surrounding an injury including a bill from a health care provider. Revising the language as suggested, from

first notice of injury to a "claim for compensation," would result in requiring injuries under Subchapter B to be noticed through a specific DWC Form-041, *Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease*, which can be filed up to one year from the date of injury. Using the suggested language would allow an insurance carrier to delay investigation up to one year after the date of injury. This would conflict with the general premise in §415.002 that an insurance carrier must process claims promptly and with the prioritization of claims for medical benefits to first responders under §504.055 (relating to Expedited Provision of Medical Benefits for Certain Injuries Sustained by First Responder in Course and Scope of Employment). No change was made in response to this comment.

Comment: A commenter states that DWC has exceeded its statutory authority by requiring that the Notice of Continuing Investigation be received by DWC since Labor Code §409.021(a-3) states that the insurance carrier must "provide" the notice to the injured employee and DWC and that "provided" and "received" are different concepts. The commenter further states that the insurance carrier does not have to prove when DWC receives the notice and that DWC Rule 102.5 adequately addresses written communications to and from DWC. The commenter recommends revising §124.2(h) to say: "The notification requirements of this section are not considered complete until the insurance carrier provides a copy of the notice to both the claimant and the division."

Response: DWC appreciates the comment. The requirement in Subsection (h) that the notification requirements for a Notice of Continuing Investigation are not considered complete until a copy of the notice is received by DWC is the same as the notification requirements for claim denials under Subsection (k) that have been in place since 1999. DWC must be able to monitor Notices of Continuing Investigation submitted by insurance carriers the same way it monitors claim denials, ensuring that these notices comply with the statute and DWC rules. DWC notes that §402.00128 outlines the commissioner's authority to "prescribe the form, manner, and procedure for the transmission of information to the division" and §§414.002-414.003 outline DWC's authority to monitor insurance carriers for compliance with DWC rules and to compile and maintain information as necessary to detect noncompliance. Rule 102.5 clarifies the requirements for written communications to and from DWC, including the requirement that electronic communications, including facsimile, shall be filed in the "format, form, and manner prescribed" by DWC and are considered filed or sent on the date received by DWC. Section 409.021(a-3) states that "the insurance carrier has provided notice to the employee and the division." DWC has the authority to interpret and define this statutory language consistent with the Act and DWC rules. *Railroad Comm'n*, 336 SW3d at 629-630; *Mid-Century*, 187 SW3d at 758-759. No change was made in response to this comment.

Comment: One commenter asked that DWC clarify whether a description is required for all claim-specific evidence or documentation the insurance carrier believes relevant and necessary to complete its investigation or if the duty to describe evidence is limited to the additional claim-specific evidence or documentation the insurance carrier reasonably believes is both relevant and necessary to complete its investigation.

Response: DWC appreciates the comment but disagrees that clarification of the rule text is needed. The requirements for an insurance carrier's Notice of Continuing Investigation are stated in §409.021(a-3). Relatedly, §124.2(h)(1)(A) requires a descrip-

tion of all investigative steps taken prior to the issuance of a Notice of Continuing Investigation. Paragraph (B) requires "a list of any claim-specific evidence, releases, or documentation the insurance carrier reasonably believes is both relevant and necessary to complete its investigation." An insurance carrier is only required to identify or list the missing information needed to complete its investigation. No change was made in response to this comment.

Comment: One commenter said that proposed §124.2(h)(2) could be interpreted to impose an "unduly burdensome" deadline for an injured employee to "marshal all claim-specific evidence and documentation an insurance carrier reasonably believes to be reasonable and necessary," and that an injured employee's failure to respond to the notice could result in a denial of claim, loss of benefits (medical and income), and preclude any administrative violation against the insurance carrier.

Response: DWC appreciates the comment. Subsection (h)(2) directly reflects the statutory command and does not impose burdens or consequences upon an injured employee. Under SB 2551, §409.021(a-3) requires that an insurance carrier's Notice of Continuing Investigation describe "the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury," and §415.021(c-2) provides that, before assessing an administrative penalty, DWC must "consider whether (1) the employee cooperated with the insurance carrier's investigation of the claim; (2) the employee timely authorized access to the applicable medical records before the insurance carrier's deadline to: (A) begin payment of benefits; or (B) notify the division and the employee of the insurance carrier's refusal to pay benefits." Senate Bill 2551 placed no affirmative duty on an injured employee to provide requested information or to do so within a specified timeframe. Senate Bill 2551 simply states that, for an enforcement action, DWC must consider if the injured employee "timely authorized access." What is now required under §409.021(a-3) is notice to a first responder of the evidence the insurance carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. Accordingly, this rule places no new or additional requirement on an injured employee to respond to a request for information from an insurance carrier. The rule simply specifies that if an insurance carrier issues a Notice of Continuing Investigation, the first responder must be offered a reasonable amount of time to respond, should the injured first responder choose to do so. No change was made in response to this comment.

Comment: One commenter challenged proposed §124.2(h)(3) and its directive that the statement of evidence that the insurance carrier reasonably believes is necessary may not be limited by a "directly related" standard. Medical records, the commenter asserts, generally may contain information that may be admissible in a dispute resolution proceeding or that may lead to identification of other records that are relevant and admissible. In addition, medical records frequently contain references to the existence of risk factors for the development of an injury or disease, including references to the occurrence or cause of the disease, injury, or cause of death of family members.

Response: DWC appreciates the comment. A Notice of Continuing Investigation is not a discovery request, does not create a discovery request standard nor does it limit the discovery process available to parties throughout the dispute resolution process or subsequent litigation. The purpose of a Notice of Continuing Investigation is to provide an injured first responder

with notice of matters remaining to be investigated. In accordance with §409.021(a-3), a Notice of Continuing Investigation must explain the steps the insurance carrier has taken to date regarding their investigation of a claim under Subchapter B and what additional information is necessary to complete the investigation of that claim. The investigation occurs outside of, and before, any dispute resolution process and does not include the full array of discovery that is available during formal dispute resolution. To state, as Rule 124.2(h) does, that a Notice of Continuing Investigation may not request additional diagnostic testing, mental health records or include a generic request to "send all your healthcare records" does not prescribe any limitations on a party's opportunity to assert in subsequent contested case proceedings that a given request for production is or is not reasonably calculated to lead to the discovery of admissible evidence. No change was made in response to this comment.

Comment: One commenter said that DWC's discussion of proposed §124.2(h)(3) in the preamble misstates the test for relevance in the investigation or discovery process, arguing that the test for relevance in this context is whether the request is "reasonably calculated to lead to the discovery of admissible evidence." The commenter requested that DWC revise this statement to reflect the correct test for relevance in the carrier's investigation or discovery process to read: "Subsection (h)(3) provides a description of information or documents that may not be identified by the insurance carrier as reasonably necessary to complete its investigation through a Notice of Continuing Investigation such as a request ... for records that are not reasonably calculated to lead to the discovery of admissible evidence in a claim for a disease or illness or for eligibility for a statutory presumption under Government Code, Chapter 607, Subchapter B."

Response: DWC appreciates the comment but disagrees that 124.2(h)(3) should be revised or that it reflects an inappropriate discovery standard. Although DWC does limit the use of a Notice of Continuing Investigation to request certain records and information, such notice is issued prior to the initiation of a formal dispute and, as previously addressed, a Notice of Continuing Investigation is not a discovery request, does not create a discovery request standard, nor limit the discovery process available to parties throughout the dispute resolution process or subsequent litigation. As part of the Act's dispute resolution and discovery process, an insurance carrier can seek medical records, evidence, or other documentation, including through application of Rule 142.13 (concerning Discovery).

The purpose of a Notice of Continuing Investigation is to provide an injured first responder with notice of matters remaining to be investigated. The notice is an option for insurance carriers to delay the requirement in §409.021(a) to either, within 15 days of written notice of injury, initiate payment or refuse to make payment and provide the injured employee with notice of the opportunity to request a benefit review conference and of how to obtain additional information from DWC. As part of a Notice of Continuing Investigation, an insurance carrier must describe the evidence it reasonably believes is necessary to complete its investigation. No change was made in response to this comment.

Comment: One commenter asserted that the phrase "reasonable steps" in proposed §124.2(h)(4) and §124.3(g)(3) is too vague. The commenter stated that the facts and circumstances of each claim determine what is reasonable and pointed out that DWC has previously declined to mandate the manner in which insurance carriers conduct investigations. The commenter

recommended DWC revise §124.2(h)(4) to use "investigate the claim" in place of "taking reasonable steps to acquire claim-specific evidence and documentation necessary to complete its investigation of the claim" and that, in §124.3(g)(3), "reasonable" should be deleted as a modifier of "investigation."

Response: DWC appreciates the comment. First, DWC believes that the language of §415.002(a) encourages reasonable and prudent conduct by an insurance carrier when handling claims, including during the investigation of claims. See also §409.021; *Ruttiger*, 381 SW3d at 448-449 ("The carrier has statutory and regulatory duties to promptly conduct adequate investigations and reasonably evaluate and expeditiously pay workers' legitimate claims or face administrative penalties). Through the Act, the Legislature has "remove[d] insurer's exclusive control over the processing of claims." *Ruttiger*, *Id.* at 449. Furthermore, because "reasonable" is a generally accepted legal and insurance concept that has been used by the Legislature to describe insurance carrier conduct, DWC disagrees that "reasonable steps" is an impermissibly vague direction relating to the investigation of a claim. See Black's Law Dictionary 1272-1273 (7th ed. 1999). DWC agrees that the facts and circumstances of each claim determine what is reasonable to investigate a claim.

Rules 124.2(h)(4) and 124.3(g)(3) merely direct that an insurance carrier's investigation be a systematic inquiry into the specific facts and circumstances of a claim. Last, and fundamentally, DWC disagrees with the commenter's observation that §124.2(h)(4) "mandates the manner in which insurance carriers conduct investigations." To direct, as the rules does, that insurance carriers continue to take reasonable steps to acquire claim-specific evidence and documentation does not mandate the manner in which they do so. Subject to oversight by DWC, an insurance carrier is free to conduct a claim investigation as it sees fit.

However, upon full consideration of the comment, DWC recognizes that the phrase "evidence and documentation" as used in the rule may suggest that a reasonable investigation must produce more developed information than is necessary for making an initial decision on a claim. Consequently, in §124.2(h)(4), "information" has been substituted for "evidence and documentation."

Comment: Two commenters asserted that DWC exceeded its statutory authority by requiring an insurance carrier to provide the detail specified under proposed Rule 124.2(j) at the time of the denial notice when claiming an applicable statutory presumption has been rebutted. The commenters acknowledge that §409.022(d) requires that an insurance carrier include additional detail in its Notice of Denial that explains "why the insurance carrier determined a presumption under that subchapter does not apply to the claim for compensation." However, one commenter argued that neither §409.022 nor §607.058 require an insurance carrier to provide the detail required by proposed Rule 124.2(j)(2) at the time of the denial notice. The commenters urged that Rule 124.2(j)(2) be deleted.

Response: DWC appreciates the comment but disagrees that the challenged statements must be removed from the preamble or that the subsection (j)(2) should be deleted. The statutory authority for implementing these rules includes §§402.061, 409.021, and 409.022. Appropriate and reasonable notice to injured employees of the reasons a carrier is denying or not paying a claim is necessary information regarding the status of their

claim and provides injured employees with an informed opportunity to dispute a denial.

The requirements of appropriate and reasonable notice are clear in §§409.021(a) and (c), 409.022(d)(1), and within the amendments to §409.021(a)(3) in SB 2551, as well as additional guidance specified in Subchapter B for first responders. An insurance carrier has the right to refuse to initiate benefits after receiving a notice of injury, but under the Act and rules, an insurance carrier must also communicate the reasons for its actions with sufficient information and clarity.

However, DWC has concluded that the comments indicate that the duty under proposed Rule 124(j) was unclear. Where a statutory presumption under Subchapter B applies, in a notice of denial, an insurance carrier must provide the injured first responder with notice of the claim-specific information supporting denial. Accordingly, the rule has been amended to better align rule text with §409.022 and to delete reference to Government Code §607.058.

Comment: One commenter said that there appeared to be no statutory authority for the requirement in §124.2(s) on the use of an insurance company's letterhead on a plain language notice.

Response: DWC appreciates the comment but disagrees. As described in the discussion of statutory authority in the preamble for the proposed rule, §409.013 authorizes DWC to develop plain language information to provide the public with information on the benefit process and compensation procedures, §402.00128 describes the commissioner's powers and duties to prescribe the form, manner, and procedure for the transmission of information to DWC, §402.061 provides the commissioner with the authority to adopt rules as necessary for the implementation and enforcement of the Act, and §414.002 provides that DWC shall monitor the workers' compensation system for compliance with the Act. These provisions authorize DWC to adopt rules regarding the form and manner of plain language notices. No change was made in response to this comment, but as described elsewhere, the letterhead requirement is no longer included in the rule as adopted.

Comment: Three commenters urged that the requirement in proposed §124.2(s) for the use of an insurance carrier's letterhead for plain language notices be deleted. They argued that it would be costly and inefficient, particularly for insurance carriers that operate in more than one jurisdiction and for third-party administrators that work with more than one insurance carrier. Two commenters suggested that the requirement might create confusion for injured employees when an insurance carrier is working with a third-party representative.

Response: DWC agrees in part. DWC believes that an insurance carrier's notice to an injured employee regarding a claim action should be on the insurance carrier's letterhead because it makes it clear to the injured employee who is taking the action on their claim. DWC recognizes that some insurance carriers use third party administrators to perform claims adjusting responsibilities on their behalf, but it is the insurance carrier's responsibility under the Act to ensure that a claim is processed correctly and that benefits are paid to the injured employee as and when they are due. DWC recognizes that requiring the addition of the insurance carrier's letterhead on all notices presents certain implementation challenges and the current notices require the name of the insurance carrier to be inserted in the body of the notice. As a result, DWC has removed the letterhead requirement from §124.2(s). However, DWC's long-standing recommendation will

remain in place that the insurance carrier's letterhead be used for plain language notices to injured employees. DWC may revisit this issue in the future.

Comment: One commenter stated that the requirements of §124.2(s) seem to ignore that the plain language notices are DWC forms that an insurance carrier is required to complete and share with an injured worker.

Response: DWC appreciates the comment. The plain language notices issued by insurance carriers are distinct from DWC's forms which are designed to facilitate communication within the workers' compensation system. Plain language notices are templates for an insurance carrier to use when communicating with an injured employee. The forms used by DWC are standardized to facilitate communication by system participants, many of them professionals. The DWC forms and plain language notices also are distinctly numbered and grouped on the DWC web site (compare DWC Form-153 with PLN-14). No change was made in response to this comment.

§124.3

Comment: One commenter asserted that proposed 124.3(g) is inconsistent with the conjunctive nature of the eligibility standard under Subchapter B. The commenter stated that if an insurance carrier determines that a claim fails to meet one required element, then the insurance carrier should not be required to investigate the other elements of the presumption since, generally, a claimant must meet all elements for a presumption to apply. Further, the commenter asserts that the reference to "each element" obligates an insurance carrier to expend unnecessary time and resources during the course of an investigation. The commenter recommended that DWC revise the rule to remove "each element of the applicable statutory presumption" and replace it with "the applicability of the statutory presumption."

Response: DWC agrees in part. Per §415.002 (relating to Administrative Violation by Insurance Carrier), insurance carriers are expected to process claims "promptly in a reasonable and prudent manner" and not misrepresent "the reasons for not paying benefits." DWC also notes that SB 2551 amended §415.021 to require DWC to consider, when determining whether to assess an administrative violation, whether the insurance carrier "applied the statutory presumptions under Subchapter B" among other factors. As such, it is the insurance carrier's responsibility to conduct a proper investigation when it receives a written notice of injury, apply any applicable presumptions under Subchapter B, and to accordingly initiate or deny benefits.

In addition, §409.022(b) and (c) require an insurance carrier to have reasonable grounds for not paying benefits and to communicate those reasons as part of its decision to not pay benefits. If an insurance carrier chooses not to evaluate the applicability of a statutory presumption holistically and bases its determination on only one element of the presumption, then the insurance carrier risks limiting its ability to later argue other reasons why the presumption should not apply. However, to keep the language of §124.3(g) consistent with the language of §415.021, DWC agrees to make the recommended change.

Comment: One commenter asserted that Rule 124.3(g)(1) is contrary to statutory language in §607.052 and unnecessary. More specifically, the assertion is that the presumption applies only to a first responder who affirmatively seeks benefits. The commenter further asserted that a statutory presumption applies "regardless of an assertion of its applicability."

Response: DWC appreciates the comment but disagrees that there is a conflict between the requirements of §607.052 and Rule 124.3(g)(1). The requirement for a first responder to seek benefits or claim compensation is distinct from the applicability of a presumption. A statutory presumption applies regardless of whether it is asserted. DWC also disagrees that this rule should be deleted and continues to believe that system participants would benefit from the rule.

Last, if a first responder "seeks benefits or compensation for a disease or illness covered by [Subchapter B]," as described under §607.052(a)(3), they have made a claim for all of the benefits available under Subchapter B, triggering any available presumption. See §409.021(a-3). Any other interpretation would be contrary to the plain meaning of the Act and Subchapter B. See also our response to the comment on Rule 124.2(g), regarding "claim for benefits." No change was made in response to this comment.

STATUTORY AUTHORITY

The adopted rules are authorized by Texas Labor Code §§402.00111, 402.00116, 402.00128, 402.021, 402.061, 409.013, 409.021, 409.022, 414.002, and 415.021; Government Code §607.052 and §607.058; and SB 2551 §9.

Section 402.00111(a) provides that the commissioner of workers' compensation "shall exercise all executive authority, including rulemaking authority under [the Act]."

Section 402.00116 provides that the commissioner is the chief executive and administrative officer of the agency with all the powers and duties vested under the Act.

Section 402.00128 describes the general powers and duties of the commissioner, including assessing and enforcing penalties, prescribing the form, manner, and procedure for the transmission of information to DWC, and exercising other powers and duties as necessary to implement and enforce the Act.

Section 402.021 provides that a basic goal of the Texas workers' compensation system is that each employee shall be treated with dignity and respect when injured on the job and that it is the intent of the Legislature that the workers' compensation system must minimize the likelihood of disputes and resolve them promptly and fairly when identified and effectively educate and clearly inform each system participant of their rights and responsibilities under the system and how to appropriately interact within the system.

Section 402.061 provides that "[t]he commissioner shall adopt rules as necessary for the implementation and enforcement of [the Act]."

Section 409.013 authorizes DWC to develop plain language information to provide the public with information on the benefit process and compensation procedures.

Section 409.021(a) sets forth the general rule that "[n]ot later than the 15th day after the date on which an insurance carrier receives written notice of injury, the insurance carrier shall [either]: (1) begin payment of benefits as required by [the Act]; or (2) notify the division and the employee in writing of its refusal to pay and [their procedural rights]." Section 409.021(a-3) provides that "[a]n insurance carrier is not required to comply with Subsection (a) if the claim results from an injured employee's disability or death for which a presumption is claimed to be applicable under Subchapter B ... and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee and the

division with a notice that describes all steps taken by the insurance carrier to investigate the injury. Section 409.021(a-3) also requires the commissioner to adopt rules as necessary to implement that subsection. Section 409.021(d) provides that "[a]n insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier."

Section 409.022(c) provides that "[a]n insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner. Section 409.022(d) provides that, "if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from [a first responder's] disability or death for which a presumption is claimed to be applicable under Subchapter B, ... the notice must include a statement by the insurance carrier that: (1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and (2) describes the evidence that the carrier reviewed in making the determination described by Subdivision (1)."

Section 414.002 provides that DWC shall monitor the system for compliance with the Act and rules as well as other laws relating to workers' compensation.

Section 415.021(c-2) provides that "[i]n determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under Section 409.021(a-3), the commissioner shall consider whether: (1) the employee cooperated with the insurance carrier's investigation of the claim; and (2) the employee timely authorized access to the applicable medical records."

Government Code §607.052(a) provides that "[n]otwithstanding any other law, this subchapter applies only to a firefighter, peace officer, or [EMT] who: (1) on becoming employed or during employment as a firefighter, peace officer, or [EMT], received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter; (2) is employed for five or more years as a firefighter, peace officer, or [EMT]; and (3) seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a firefighter, peace officer, or [EMT]."

Section 607.052(b) provides that "[a] presumption under this subchapter does not apply: (1) to a determination of a survivor's eligibility for benefits under Chapter 615; (2) in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation; (3) to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the firefighter, peace officer, or [EMT] that provides coverage in addition to any benefits or compensation required by law; or (4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and: (A) the firefighter, peace officer, or [EMT] is or has been a user of tobacco; or (B) their spouse has, during the marriage, been a user of tobacco that is consumed through smoking."

Section 607.058(a) provides that "[a] presumption under §§607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter, peace officer, or

[EMT] was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred." Subsection (b) provides that "[a] rebuttal offered under [§607.058] must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a firefighter, peace officer, or [EMT] was a substantial factor in bringing about the individual's disease or illness without which the disease or illness would not have occurred."

Finally, §9 of SB 2551 requires that the commissioner adopt rules as required by or necessary no later than January 1, 2020.

The adopted amendments support implementation of the Workers' Compensation Act, Labor Code Title 5, Subtitle A.

§124.2. Insurance Carrier Reporting and Notification Requirements.

(a) An insurance carrier shall notify the division and the claimant of actions taken on or events occurring in a claim as required by this title.

(b) The division shall prescribe the form, format, and manner of required electronic submissions through publications such as advisory(ies), instructions, specifications, the Texas Electronic Data Interchange Implementation Guide, and trading partner agreements. Trading partners will be responsible for obtaining a copy of the International Association of Industrial Accident Boards and Commissions (IAIABC) Electronic Data Interchange Implementation Guide.

(c) The insurance carrier shall electronically file, as that term is used in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Commission), with the division:

(1) the information from the original Employer's First Report of Injury; the insurance carrier's Federal Employer Identification Number (FEIN); and the policy number, policy effective date, and policy expiration date reported under §110.1 of this title (concerning Insurance Carrier Requirements for Notifying the Division) for the employer associated with the claim, not later than the seventh day after the later of:

(A) receipt of a required report where there is lost time from work or an occupational disease; or

(B) notification of lost time if the employer made the Employer's First Report of Injury prior to the employee experiencing absence from work as a result of the injury;

(2) any correction of division-identified errors in a previously accepted electronic record as provided in §102.5(e) of this title (Correction);

(3) information regarding a compensable death with no beneficiary (Compensable Death No Beneficiaries/Payees) not later than the 10th day after determining that an employee whose injury resulted in death had no legal beneficiary; and

(4) a change in an electronic record initiated by the insurance carrier (Change), the coverage information required by paragraph (1) of this subsection if not available when the First Report of Injury was submitted to the division and any change in a claimant or employer mailing address within seven days of receipt of the new address.

(d) The insurance carrier shall notify the division and the claimant of a denial of a claim (Denial) based on non-compensability or lack of coverage in accordance with this section and as otherwise provided by this title.

(e) The insurance carrier shall notify the division and the claimant of the following:

(1) first payment of indemnity benefits on a claim (Initial Payment) within 10 days of making the first payment;

(2) change in the net benefit payment amount caused by a change in the employee's post-injury earnings (Reduced Earnings) within ten days of making the first payment reflecting the change;

(3) change in the net benefit payment amount that was not caused by a change in employee's post-injury earnings, this includes but is not limited to subrogation, attorney fees, advances, and contribution (Change in Benefit Amount), and the notice must be made within 10 days of making the first payment which reflects the change;

(4) change from one income benefit type to another or to death benefits (Change in Benefit Type) within 10 days of making the first payment reflecting the change;

(5) resumption of payment of income or death benefits (Reinstatement of Benefits) within 10 days of making the first payment;

(6) termination or suspension of income or death benefits (Suspension) within 10 days of making the last payment for the benefits; or

(7) employer continuation of salary equal to or exceeding the employee's Average Weekly Wage as defined by this title (Full Salary) within:

(A) seven days of receipt of the Employer's First Report of Injury or a Supplemental Report of Injury (if the report included information that salary would be continued) if the insurance carrier has not initiated temporary income benefits; or

(B) 10 days of making the last payment of temporary income benefits due to the employer's continuation of full salary.

(f) If an insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, or Emergency Medical Technicians), the insurance carrier shall take one of the following actions no later than the 15th day following receipt of the notice of injury:

(1) initiate benefits as required by the Workers' Compensation Act and the division's rules;

(2) file a notice of denial as described in this section; or

(3) provide the claimant and the division with notice as required under Labor Code §409.021(a-3) (Notice of Continuing Investigation) for a claim for benefits received on or after June 10, 2019.

(g) When applying subsection (f) of this section and Government Code, Chapter 607, Subchapter B, a "claim for benefits" means the first written notice of injury as provided in §124.1 of this title (concerning Notice of Injury).

(h) The insurance carrier shall issue a Notice of Continuing Investigation as a plain language notice in the form and manner prescribed by the division. The notification requirements of this section are not considered complete until a copy of the notice provided to the claimant is received by the division.

(1) A Notice of Continuing Investigation shall include the following:

(A) a statement describing all steps taken by the insurance carrier to investigate the disease or illness before the notice was given;

(B) a list of any claim-specific evidence, releases, or documentation the insurance carrier reasonably believes is both relevant and necessary to complete its investigation; and

(C) contact information for the adjuster, including the adjuster's email address, facsimile number, and telephone number.

(2) An insurance carrier shall provide a reasonable amount of time for a claimant to respond to the notice.

(3) The notice may not include a request for additional diagnostic testing, mental health records, generic requests (such as "the claimant's medical records"), or requests for records that are not directly related to either the disease or illness or eligibility for application of a statutory presumption.

(4) Notwithstanding the issuance of a Notice of Continuing Investigation, an insurance carrier must continue taking reasonable steps to acquire claim-specific information necessary to complete its investigation of the claim.

(i) Notification to the claimant as required by subsections (d) - (h) of this section requires the insurance carrier to use plain language notices in the form and manner prescribed by the division. These notices shall provide a full and complete statement describing the insurance carrier's action and rationale. The statement must contain sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim. A generic statement that simply states the insurance carrier's position with phrases such as "employee returned to work," "adjusted for light duty," "liability is in question," "compensability in dispute," "under investigation," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(j) In addition to the denial notice requirements in subsection (i), if the insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, or Emergency Medical Technicians), the denial must also include the following:

(1) If the insurance carrier asserts that a statutory presumption does not apply, a statement explaining why and describing the claim-specific information that the insurance carrier reviewed.

(2) Alternatively, based upon its investigation, if the insurance carrier concludes that a statutory presumption applies, but that a notice of denial will be issued, a statement explaining why and describing the claim-specific information reviewed prior to issuance of the notice, that supports a reasonable belief that risk factors, accidents, hazards, or other causes not associated with their employment were a substantial factor in bringing about the injured employee's disease or illness, without which the disease or illness would not have occurred.

(3) If the insurance carrier provided a timely Notice of Continuing Investigation as permitted by law, the denial notice must also include a statement describing whether the claimant provided a timely response to the notice.

(k) Notification to the division as required by subsections (c) - (h) of this section requires the insurance carrier to use electronic filing, as that term is used in §102.5(e) of this title (concerning General Rules for Written Communications to and from the Commission).

(1) In addition to the electronic filing requirements of this subsection, when an insurance carrier notifies the division of a denial as required by this section, it must provide the division a written copy of the notice provided to the claimant as described under subsections (i) - (j) of this section, as applicable.

(2) The notification requirements of this section are not considered completed until the copy of the notice provided to the claimant is received by the division.

(l) Notification to the division and the claimant of a dispute of disability, extent of injury, or eligibility of a claimant to receive death benefits shall be made as otherwise prescribed by this title and requires the insurance carrier to use plain language notices in the form and manner prescribed by the division. These notices shall provide a full and complete statement describing the insurance carrier's action and its reason(s) for such action. The statement must contain sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim. A generic statement that simply states the insurance carrier's position with phrases such as "no medical evidence to support disability," "not part of compensable injury," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(m) The division shall send an acknowledgment to the transmitting trading partner detailing whether an electronically submitted record was accepted, accepted with errors, or rejected. The acknowledgment shall be provided directly to the trading partner submitting the transmission, not through the Austin representative box identified in §102.5 of this title. If the record was accepted with errors in conditional elements, the insurance carrier must correct the errors in accordance with §102.5 of this title.

(n) Except as otherwise provided by this title, insurance carriers shall not provide notices to the division that explain that:

- (1) benefits will be paid as they accrue;
- (2) a wage statement has been requested;
- (3) temporary income benefits are not due because there is no lost time;
- (4) the insurance carrier is disputing some or all medical treatment as not reasonable or necessary;
- (5) compensability is not denied but the insurance carrier disputes the existence of disability (if there are no indications of lost time or disability and the employee is not claiming disability); or
- (6) future medical benefits are disputed (notices of which shall not be provided to anyone in the system).

(o) Written requests for a waiver of the electronic filing requirement for the Employer's First Report of Injury may be submitted to the commissioner or their designee for consideration. Waivers must be requested at least annually, and the requests must include a justification for the waiver, the volume of the insurance carrier's claims and total premium amounts, current automation capabilities, Electronic Data Interchange (EDI) programming status, and a specific target date to implement EDI. Waivers require written approval and shall be granted at the discretion of and for the time frame noted by the commissioner or their designee.

(p) If specifically directed by the division, such as through division advisory or the Texas Electronic Data Interchange Guide, the insurance carrier may provide the information required in subsections (c) - (g) of this section to the division in hardcopy or paper format.

(q) Notifications to the claimant and the claimant's representative shall be filed by facsimile or electronic transmission unless the recipient does not have the means to receive such a transmission in which case the notifications shall be personally delivered or sent by mail.

(r) Each insurance carrier shall provide to the division, through its Austin representative in the form and manner prescribed by the division, the contact information for all workers' compensation claim ser-

vice administration functions performed by the insurance carrier either directly or through third parties.

(1) The contact information for each function shall include mailing address, telephone number, facsimile number, and email address as appropriate. This contact information may be provided either in the form of a single Uniform Resource Locator (URL) for a web page created and maintained by the insurance carrier that contains the required information or through an online submission to the division.

- (A) Coverage verification (policy issuance and effective dates of policy);
- (B) Claim adjustment;
- (C) Medical billing;
- (D) Pharmacy billing (if different from medical billing); and
- (E) Preauthorization.

(2) If the web page option is used the page shall contain the date on which it was last updated and an email address or other contact information to which a user may report problems or inaccuracies.

(3) The insurance carrier shall update the contact information or URL within 10 working days after any such change is made.

(s) All notices to a claimant required under this section must be stated in plain language and in no less than 12-point font. This subsection applies to notices sent on or after April 1, 2020.

§124.3. Investigation of an Injury and Notice of Denial or Dispute.

(a) Except as provided in subsection (b) of this section, upon receipt of written notice of injury as provided in §124.1 of this title (relating to Notice of Injury) the insurance carrier shall conduct an investigation relating to the compensability of the injury, the insurance carrier's liability for the injury, and the accrual of benefits. If the insurance carrier believes that it is not liable for the injury or that the injury was not compensable, the insurance carrier shall file the notice of denial of a claim (Notice of Denial) in the form and manner required by Labor Code §409.022 (relating to Refusal to Pay Benefits; Notice; Administrative Violation) and §124.2 of this title (concerning Insurance Carrier Reporting and Notification Requirements).

(1) If the insurance carrier does not file a Notice of Denial by the 15th day after receipt of the written notice of injury or does not file a Notice of Continuing Investigation as described under Labor Code §409.021(a-3) (relating to Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation), the insurance carrier is liable for any benefits that accrue and shall initiate benefits in accordance with this section.

(2) If the insurance carrier files a Notice of Denial after the 15th day but on or before the 60th day after receipt of written notice of the injury:

(A) The insurance carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the insurance carrier filed the Notice of Denial and only then is it permitted to suspend payment of benefits; and

(B) The insurance carrier is liable for and shall pay for all medical services, in accordance with the Act and rules, provided prior to the filing of the Notice of Denial.

(3) The insurance carrier shall not file notice with the division that benefits will be paid as and when they accrue with the division.

(4) An insurance carrier's failure to file a Notice of Denial or a Notice of Continuing Investigation by the 15th day after it receives

written notice of an injury constitutes the insurance carrier's acceptance of the claim as a compensable injury, subject to the insurance carrier's ability to contest compensability on or before the 60th day after receipt of written notice of the injury. In the event of such a failure, the insurance carrier is liable for and shall pay all income and medical benefits that have accrued or become payable, subject to the insurance carrier's right to contest compensability on or before the 60th day.

(5) The insurance carrier commits an administrative violation if, not later than the 15th day after it receives written notice of the injury, it does not begin to pay benefits as required, file a Notice of Denial of the compensability of a claim, or file a Notice of Continuing Investigation in the form and manner required by §124.2 of this title. The division will send periodic notifications to all insurance carriers regarding the amount of penalties owed and the proper way to submit and document the payments.

(b) Except as provided by subsection (c), the insurance carrier waives the right to contest compensability of or liability for the injury, if it does not contest compensability on or before the 60th day after the date on which the insurance carrier receives written notice of the injury.

(c) If the insurance carrier wants to deny compensability of or liability for the injury after the 60th day after it received written notice of the injury:

(1) the insurance carrier must establish that it is basing its denial on evidence that could not have reasonably been discovered earlier; and

(2) the insurance carrier is liable for and shall pay all benefits that were payable prior to and after filing the Notice of Denial until the division has made a finding that the evidence could not have been reasonably discovered earlier.

(d) If the claim involves the death of an injured employee, investigations, denials of compensability or liability, and disputes of the eligibility of a potential beneficiary to receive death benefits are governed by §132.17 of this title (concerning Denial, Dispute, and Payment of Death Benefits). Notwithstanding §132.17(f)(1) and (2) of this title, the insurance carrier may issue a Notice of Continuing Investigation in accordance with the provisions of §124.2(f) and this section.

(e) Notwithstanding §132.13 of this title (concerning Burial Benefits), if an insurance carrier has issued a Notice of Continuing Investigation in accordance with the provisions of §124.2(f) and this section, the insurance carrier shall either pay or deny a claim for burial benefits within seven days from the date the insurance carrier either initiated benefits or filed a notice of denial in accordance with §124.2(f) of this title.

(f) Labor Code §409.021 and subsection (a) of this section do not apply to disputes of extent of injury. If an insurance carrier receives a medical bill that involves treatment(s) or service(s) that the insurance carrier believes is not related to the compensable injury, the insurance carrier shall file a notice of dispute of extent of injury (notice of dispute). The notice of dispute shall be filed in accordance with §124.2 of this title and be filed not later than the earlier of:

(1) the date the insurance carrier denied the medical bill; or

(2) the due date for the insurance carrier to pay or deny the medical bill as provided in Chapter 133 of this title (concerning General Medical Provisions).

(g) If the insurance carrier receives a written notice of injury for a disease or illness identified by Texas Government Code, Chapter 607, Subchapter B (relating to Diseases or Illnesses Suffered by Firefighters, Peace Officers, and Emergency Medical Technicians), it shall investigate the applicability of the statutory presumption as well

as compensability of the injury, liability for the injury, and the accrual of benefits.

(1) A claimant is not required to expressly claim the applicability of a statutory presumption in order for the statutory presumption to apply.

(2) A presumption under Government Code, Chapter 607, Subchapter B, is claimed upon an insurance carrier's receipt of a written notice of injury which identifies:

(A) the injured or deceased employee's occupation as a firefighter, peace officer, or emergency medical technician, and

(B) the injured or deceased employee's disease or illness is a medical condition identified by Subchapter B.

(3) A determination that the statutory presumption does not apply does not relieve the insurance carrier of its continuing obligation to conduct a reasonable investigation relating to the compensability of the injury, liability for the injury, and accrual of benefits.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 804-4703



CHAPTER 180. MONITORING AND ENFORCEMENT

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to §180.8 (concerning Notices of Violation; Notices of Hearing; Default Judgment) and §180.26 (concerning Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies). The amendments are adopted without changes to the text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6226). The rules will not be republished.

REASONED JUSTIFICATION

These rules are adopted as required under Senate Bill (SB) 2551, 86th Legislature (2019). Senate Bill 2551 amended both the Workers' Compensation Act, Labor Code Title 5 (Act), and Government Code Chapter 607, Subchapter B (Subchapter B) (relating to Diseases and Illnesses Suffered by Firefighters, Peace Officers, and Emergency Medical Technicians (EMTs) (collectively "first responders")). A separate bill, SB 1582, added peace officers to the list of first responders covered by Subchapter B. As these adopted rules will apply uniformly to all first responders covered by Subchapter B, no additional rulemaking is required to implement SB 1582. These amendments are adopted concurrently with amendments to Chapter 124, which address both an insurance carrier's obligation to investigate and the notification process for presumption claims for first responders. The adopted amendments to Chapter 180 conform the

rules regarding the factors DWC must consider when assessing an administrative violation with statutory changes made by SB 2551. The reasoned justifications for the amendments to Chapters 124 and 180 are meant to be read together, and each is incorporated by reference into the other.

Subchapter B applies to certain occupational diseases or illnesses suffered by first responders who meet the qualifications set forth. Subchapter B applies to first responders who received a physical examination upon or during employment that did not reveal evidence of the illness or disease for which benefits or compensation is sought, who have been employed for five years or more as a first responder, and who seek benefits or compensation for a disease or illness covered by the subchapter that is discovered during employment as a first responder. Gov't Code §607.052(a). The diseases and illnesses covered by Subchapter B are tuberculosis or other respiratory illness, smallpox, reactions to vaccinations, cancer (firefighters and EMTs only), and acute myocardial infarction or stroke. §§607.053-607.056.

The presumptions under Subchapter B do not apply to a determination of a survivor's eligibility for benefits under Government Code Chapter 615, (relating to Financial Assistance to Survivors of Certain Law Enforcement Officers, Fire Fighters, and Others), in a cause of action brought in court except for judicial review of a grant or denial of employment-related benefits or compensation, to a determination regarding benefits or compensation under a life or disability insurance policy. Furthermore, a presumption does not apply if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and if either the first responder is or has been a user of tobacco or if their spouse has, during the marriage, smoked tobacco. §607.052(b). The presumptions under Subchapter B apply to a determination of whether a first responder's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation. §607.057.

Senate Bill 2551 amended Subchapter B to direct that four specified types of cancer and cancers originating in seven specified organs might trigger the presumption under Government Code §607.055. Senate Bill 2551 also amended the requirements for rebutting a presumption. A presumption can be rebutted through showing, by a preponderance of the evidence, that a risk factor, accident, hazard, or other cause not associated with an individual's service as a first responder was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. §607.058(a). A rebuttal must include a statement that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a first responder was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. §607.058(b).

Senate Bill 2551 also amended the Act to provide an insurance carrier with an additional option at the 15th day after receiving written notice of a first responder's disability or death for which a presumption may be applicable under Subchapter B. Labor Code §409.021(a-3). Generally, at the 15th day, an insurance carrier must either begin the payment of benefits or notify the injured employee and DWC in writing of its refusal to pay. §409.021(a). An insurance carrier now has the option, at the 15th day, of providing a first responder and DWC with a notice, referred to in these rules as a "Notice of Continuing Investigation," that describes all steps taken by the insurance carrier to

investigate the disability or death before notice was given and the information the insurance carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. §409.021(a-3).

The bill also amended Labor Code §415.021, to require that the commissioner consider whether the employee cooperated with the insurance carrier's investigation of the claim and whether the employee timely authorized access to the relevant medical records when determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided a Notice of Continuing Investigation. The commissioner shall also consider whether the insurance carrier conducted an investigation of the claim, applied the statutory presumptions under Subchapter B, and expedited medical benefits under Labor Code §504.055 (relating to Expedited Provision of Medical Benefits for Certain Injuries Sustained by First Responder in Course and Scope of Employment).

The changes in law made by SB 2551 apply to a claim for benefits filed on or after June 10, 2019, the effective date of SB 2551. Section 8 of SB 2551 provides that the amendments to Government Code §607.055 and §607.058 apply only to a claim for benefits filed on or after June 10, 2019. Section 10 of SB 2551 provides that Labor Code §504.053(e)(1) applies only to administrative violations that occur on or after June 10, 2019. The adopted amendments will not apply to a claim for benefits filed before June 10, 2019.

DWC posted an informal draft of these amendments on its website for comment and hosted a stakeholder meeting on Wednesday, August 21, 2019. Subsequently, and in response to the comments received, DWC published proposed amendments in the Texas Register and held a public hearing on Wednesday, November 20, 2019.

Pursuant to the directives of SB 2551, DWC is conforming existing rules with new statutory language. The amendments to Rule 180.8(b) describe the requirements for a Notice of Violation (NOV). The adopted amendments to subsection (b)(4)(A)-(B) incorporate by reference a new factor under §415.021(c-2). Under the adopted amendments, if applicable, an NOV will demonstrate that DWC considered the factors in §415.021(c-2) before determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under §409.021(a-3).

In addition, the amendments to Rule 180.26 implement the criteria for imposing, recommending, and determining sanctions. The amendments include a subsection (f), which provides that DWC shall consider the factors in Labor Code §415.021(c-2) when determining which sanction to impose in claims where the insurance carrier provided a Notice of Continuing Investigation.

Throughout Rules 180.8 and 180.26, additional non-substantive editorial changes are adopted to correct errors of grammar and punctuation, clarify wording, and to conform to the agency's style guidelines.

Finally, SB 2551 required that DWC adopt rules as required by or necessary to implement the bill. DWC adopts these amendments to implement SB 2551.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Texas Mutual Insurance Company and the Office of Injured Employee Counsel submitted comments offering general support of the implementation of SB 2551 and against the adoption of certain specific provisions.

Comment: Two commenters offered general support for the proposed rules.

Response: DWC appreciates the supportive comments.

Comment: One commenter raised a specific question regarding the amendments to §124.2(h)(1)(B) and (h)(2) and the "application of these subsections" to §180.8 and §180.26. The commenter states that the proposed amendments to §124.2 could be interpreted as imposing a deadline on the injured employee to provide the insurance carrier with evidence or documentation to support their claim, which is unduly burdensome. Further, the commenter suggests that failure for an injured employee to comply with the insurance carrier's request may result in a denial of the claim, loss of benefits, and precludes any administrative violation against the insurance carrier.

Response: DWC appreciates the comment but disagrees that it has applied the requirements of §124.2(h)(1)(B) and (h)(2) to §180.8 and §180.26. The adopted amendments to §180.8 and §180.26 simply conform the language in these rules with changes made to Labor Code §415.021(c-2) by SB 2551, which requires the commissioner to consider additional factors when assessing administrative penalties in claims involving a presumption under Subchapter B. Failure by an injured employee to provide information requested by an insurance carrier does not preclude any administrative violation against the insurance carrier for noncompliance with the Act and DWC rules. DWC notes that amendments to §124.2(h)(1)(B) and (h)(2), address the contents of a Notice of Continuing Investigation and an insurance carrier's obligation to provide a claimant with a reasonable amount of time to respond. These amendments do not impose deadlines on injured employees. Rather, they provide an injured employee with plain language information about the steps the insurance carrier has taken to investigate their claim and a description of the information the insurance carrier believes it needs to complete the investigation, including any information needed from the injured employee. No changes were made as a result of this comment.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

28 TAC §180.8

Statutory Authority

The adopted rules are authorized by Texas Labor Code §§402.00111, 402.00116, 402.00128, 402.021, 402.061, 409.021, 409.022, 414.002, and 415.021; Government Code §607.052 and §607.058; and SB 2551 §9.

Section 402.00111(a) provides that the commissioner of workers' compensation "shall exercise all executive authority, including rulemaking authority under [the Act]."

Section 402.00116 provides that the commissioner is the chief executive and administrative officer of the agency with all the powers and duties vested under the Act.

Section 402.00128 describes the general powers and duties of the commissioner, including assessing and enforcing penalties and prescribing the form, manner, and procedure for the transmission of information to DWC.

Section 402.021 provides that a basic goal of the Texas workers' compensation system is that each employee shall be treated with dignity and respect when injured on the job and that it is the intent of the Legislature that the workers' compensation system must

minimize the likelihood of disputes and resolve them promptly and fairly when identified and effectively educate and clearly inform each system participant of their rights and responsibilities under the system and how to appropriately interact within the system.

Section 402.061 provides that "[t]he commissioner shall adopt rules as necessary for the implementation and enforcement of [the Act]."

Section 409.021(a) sets forth the general rule that "[n]ot later than the 15th day after the date on which an insurance carrier receives written notice of injury, the insurance carrier shall [either]: (1) begin payment of benefits as required by [the Act]; or (2) notify the division and the employee in writing of its refusal to pay and [their procedural rights]." Section 409.021(a-3) provides that "[a]n insurance carrier is not required to comply with Subsection (a) if the claim results from an injured employee's disability or death for which a presumption is claimed to be applicable under Subchapter B " ... and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee and the division with a notice that describes all steps taken by the insurance carrier to investigate the injury. Section 409.021(a-3) also requires the commissioner to adopt rules as necessary to implement that subsection. Section 409.021(d) provides that "[a]n insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier."

Section 409.022(c) provides that "[a]n insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner. Section 409.022(d) provides that, "if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from [a first responder's] disability or death for which a presumption is claimed to be applicable under Subchapter B, ... the notice must include a statement by the insurance carrier that: (1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and (2) describes the evidence that the carrier reviewed in making the determination described by Subdivision (1)."

Section 414.002 provides that DWC shall monitor the system for compliance with the Act and rules as well as other laws relating to workers' compensation.

Section 415.021(c-2) provides that "[i]n determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under Section 409.021(a-3), the commissioner shall consider whether: (1) the employee cooperated with the insurance carrier's investigation of the claim; and (2) the employee timely authorized access to the applicable medical records."

Government Code §607.052(a) provides that "[n]otwithstanding any other law, this subchapter applies only to a firefighter, peace officer, or [EMT] who: (1) on becoming employed or during employment as a firefighter, peace officer, or [EMT], received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter; (2) is employed for five or more years as a firefighter, peace officer, or [EMT]; and (3) seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a firefighter, peace officer, or [EMT]."

Section 607.052(b) provides that "[a] presumption under this subchapter does not apply: (1) to a determination of a survivor's eligibility for benefits under Chapter 615; (2) in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation; (3) to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the firefighter, peace officer, or [EMT] that provides coverage in addition to any benefits or compensation required by law; or (4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and: (A) the firefighter, peace officer, or [EMT] is or has been a user of tobacco; or (B) their spouse has, during the marriage, been a user of tobacco that is consumed through smoking."

Section 607.058(a) provides that "[a] presumption under §§607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter, peace officer, or [EMT] was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred." Subsection (b) provides that "[a] rebuttal offered under [§607.058] must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a firefighter, peace officer, or [EMT] was a substantial factor in bringing about the individual's disease or illness without which the disease or illness would not have occurred."

Finally, §9 of SB 2551 requires that the commissioner adopt rules as required by or necessary no later than January 1, 2020.

The adopted amendments support implementation of the Workers' Compensation Act, Labor Code Title 5, Subtitle A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §180.26

The adopted rules are authorized by Texas Labor Code §§402.00111, 402.00116, 402.00128, 402.021, 402.061, 409.021, 409.022, 414.002, and 415.021; Government Code §607.052 and §607.058; and SB 2551 §9.

Section 402.00111(a) provides that the commissioner of workers' compensation "shall exercise all executive authority, including rulemaking authority under [the Act]."

Section 402.00116 provides that the commissioner is the chief executive and administrative officer of the agency with all the powers and duties vested under the Act.

Section 402.00128 describes the general powers and duties of the commissioner, including assessing and enforcing penalties and prescribing the form, manner, and procedure for the transmission of information to DWC.

Section 402.021 provides that a basic goal of the Texas workers' compensation system is that each employee shall be treated with dignity and respect when injured on the job and that it is the intent of the Legislature that the workers' compensation system must minimize the likelihood of disputes and resolve them promptly and fairly when identified and effectively educate and clearly inform each system participant of their rights and responsibilities under the system and how to appropriately interact within the system.

Section 402.061 provides that "[t]he commissioner shall adopt rules as necessary for the implementation and enforcement of [the Act]."

Section 409.021(a) sets forth the general rule that "[n]ot later than the 15th day after the date on which an insurance carrier receives written notice of injury, the insurance carrier shall [either]: (1) begin payment of benefits as required by [the Act]; or (2) notify the division and the employee in writing of its refusal to pay and [their procedural rights]." Section 409.021(a-3) provides that "[a]n insurance carrier is not required to comply with Subsection (a) if the claim results from an injured employee's disability or death for which a presumption is claimed to be applicable under Subchapter B ... and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee and the division with a notice that describes all steps taken by the insurance carrier to investigate the injury. Section 409.021(a-3) also requires the commissioner to adopt rules as necessary to implement that subsection. Section 409.021(d) provides that "[a]n insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier."

Section 409.022(c) provides that "[a]n insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner. Section 409.022(d) provides that, "if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from [a first responder's] disability or death for which a presumption is claimed to be applicable under Subchapter B, ...the notice must include a statement by the insurance carrier that: (1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and (2) describes the evidence that the carrier reviewed in making the determination described by Subdivision (1)."

Section 414.002 provides that DWC shall monitor the system for compliance with the Act and rules as well as other laws relating to workers' compensation.

Section 415.021(c-2) provides that "[i]n determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under Section 409.021(a-3),

the commissioner shall consider whether: (1) the employee cooperated with the insurance carrier's investigation of the claim; and (2) the employee timely authorized access to the applicable medical records."

Government Code §607.052(a) provides that "[n]otwithstanding any other law, this subchapter applies only to a firefighter, peace officer, or [EMT] who: (1) on becoming employed or during employment as a firefighter, peace officer, or [EMT], received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter; (2) is employed for five or more years as a firefighter, peace officer, or [EMT]; and (3) seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a firefighter, peace officer, or [EMT]."

Section 607.052(b) provides that "[a] presumption under this subchapter does not apply: (1) to a determination of a survivor's eligibility for benefits under Chapter 615; (2) in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation; (3) to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the firefighter, peace officer, or [EMT] that provides coverage in addition to any benefits or compensation required by law; or (4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and: (A) the firefighter, peace officer, or [EMT] is or has been a user of tobacco; or (B) their spouse has, during the marriage, been a user of tobacco that is consumed through smoking."

Section 607.058(a) provides that "[a] presumption under §§607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter, peace officer, or [EMT] was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred." Subsection (b) provides that "[a] rebuttal offered under [§607.058] must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a firefighter, peace officer, or [EMT] was a substantial factor in bringing about the individual's disease or illness without which the disease or illness would not have occurred."

Finally, §9 of SB 2551 requires that the commissioner adopt rules as required by or necessary no later than January 1, 2020.

The adopted amendments support the implementation of the Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 23, 2019.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 222. SUBSURFACE AREA DRIP DISPERSAL SYSTEMS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§222.1, 222.3, 222.5, 222.31, 222.33, 222.73, 222.75, 222.81, 222.83, 222.85, 222.87, 222.115, 222.119, 222.127, 222.157, 222.159, and 222.163.

Sections 222.1, 222.3, 222.5, 222.31, 222.33, 222.73, 222.75, 222.81, 222.83, 222.85, 222.87, 222.115, 222.119, 222.127, 222.157, 222.159, and 222.163 are adopted *without changes* to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3227), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

On March 14, 2016, the commission received a petition from the City of Austin (petitioner). The petitioner requested that the commission initiate rulemaking to amend 30 TAC Chapters 222 and 309 (Project Number 2016-033-PET-NR). The rulemaking would allow permittees and applicants to rely on the beneficial reuse of treated wastewater when calculating the amount of land required for disposal of treated wastewater. This would allow permittees and applicants to reduce the acreage dedicated for land application that is currently required by rule. The commission approved the petition to initiate rulemaking with stakeholder involvement. The executive director held a stakeholder meeting on August 9, 2016, and the public was invited to comment on the petition. The public comment period was from August 28, 2016 through October 28, 2016.

Based on information presented at the stakeholder meeting, the executive director understands that the petition was made in response to increasing demands on water supplies and decreasing availability of contiguous or neighboring tracts of land that are large enough for domestic wastewater disposal under the commission's current rules. This trend is currently appearing in parts of Central Texas where wastewater discharge to water in the state is restricted by the commission's rules and land application of treated wastewater is the only permissible disposal option. The executive director recognizes that land availability may also be limited in other parts of the state, and that practicable land application options are especially important wherever discharge to water in the state is restricted or infeasible.

The adopted revisions in this chapter, and the corresponding adopted revisions in Chapter 309, will allow a reduction in the acreage dedicated for land application of treated effluent by applying a "Beneficial reuse credit" when calculating the disposal

site area required. An applicant could also foreseeably request to use a beneficial reuse credit to increase the permitted flow without changing the disposal tract acreage or to change both the acreage and the permitted flow. The beneficial reuse credit will be based on the demonstrated firm reclaimed water demand. The effluent storage size required by Chapter 222 may not be reduced by the beneficial reuse credit. The adopted rulemaking will establish the criteria for demonstrating firm reclaimed water demand, the procedure for calculating and applying the beneficial reuse credit, and the requirements for a permittee who has been granted a beneficial reuse credit. The adopted amendments also correct inaccurate or outdated references to TAC or provide additional clarity.

Section by Section Discussion

The commission amends Chapter 222 to replace the term "waste" with "wastewater" throughout to clarify that regulations in this chapter apply to wastewater.

The commission amends Chapter 222 to update references to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent terminology. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion of this preamble (i.e., §§222.1, 222.3, 222.73, 222.75, 222.87, 222.115, 222.119, and 222.163).

§222.5, Definitions

The commission adopts §222.5(2) to define "Beneficial reuse credit" as the term is defined in adopted Chapter 309 for consistency and to establish usage of the term as it relates to adopted §222.83(d) and (e) and §222.127(c). The commission renumbers the subsequent paragraphs accordingly to accommodate the adopted definition.

The commission amends the definition of "Domestic waste" in renumbered §222.5(5) to correct the term to "Domestic Wastewater" and include a reference to 30 TAC §210.82 to clarify the term "Graywater" used in the definition.

The commission amends the definition of "Industrial waste" in renumbered §222.5(14) to correct the term to "Industrial wastewater" and clarify the term to be more consistent with the definition in 30 TAC §312.8.

The commission amends the definition of "Public contact" in renumbered §222.5(20) to replace the existing definition with language similar to the definition of "Public contact site" in §312.8 to prevent ambiguity and for consistency.

§222.31, Application Process

The commission amends §222.31(a) to remove reference to systems that did not have a permit prior to the adoption of the rules as this reference is obsolete.

The commission adopts to remove §222.31(b) and (c) since the references are obsolete. Subsurface area drip dispersal system facilities that held permits prior to July 31, 2006, have applied for permits under Chapter 222 and, therefore §222.31(b) and (c) are obsolete. The commission re-letters the subsequent subsections accordingly to accommodate the deletions.

The commission amends relettered §222.31(d) to remove redundant language.

The commission amends §222.31(l)(6) to change "poor performer" to "unsatisfactory performer" to be consistent with the

definition in 30 TAC §60.2(g)(2) and correct the reference from 30 TAC §60.3 to 30 TAC §60.2.

§222.33, Public Notice

The commission deletes §222.33(a) to remove redundancy.

§222.81, Buffer Zone Requirements

The commission amends §222.81(a)(2) to remove the reference to §309.13(c)(1) as the reference is not necessary.

§222.83, Hydraulic Application Rate

The commission adopts §222.83(d) to allow the beneficial reuse credit to be used when calculating the disposal area required based on the hydraulic application rate. The applicant, if granted a beneficial reuse credit by the executive director in accordance with Chapter 309, Subchapter D (Beneficial Reuse Credit), may reduce the permitted wastewater flow volume by the beneficial reuse credit when calculating the disposal area required based on the hydraulic application rate. This allows a person to reduce the required size of the disposal site. An applicant could also foreseeably request to use a beneficial reuse credit to increase the permitted flow without changing the disposal tract acreage or to change both the acreage and the permitted flow.

The commission adopts §222.83(e) to prohibit reducing the disposal site area by more than 50% of the area required based on the permitted flow. The applicant must have a disposal site area that can receive at least 50% of the permitted flow, even if 100% of the effluent is used as reclaimed water. If an applicant who was granted a beneficial reuse credit in a previous permit action requests an increase in permitted flow, they must still satisfy this requirement. This requirement provides a reasonable margin of safety against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

§222.85, Effluent Quality

The commission amends §222.85(b)(1) to remove redundant language.

§222.127, Storage

The commission adopts §222.127(c) to prohibit the reduction of the required storage. Effluent storage is especially necessary if the disposal site acreage has been reduced by the beneficial reuse credit and the amount of reclaimed water distributed to users declines. Not allowing reductions in effluent storage provides an extra safety measure against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

§222.157, Soil Sampling

The commission amends §222.157(c) to remove "or extractable" to provide clarity. Acceptable methods that use extractions make it possible to report nutrients on a plant-available basis, which is more meaningful for calculating soil nutrient balances.

§222.159, Operator Licensing

The commission removes §222.159(d) because the compliance period has passed, and all facilities are required to meet the requirement.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined

in that statute. Texas Government Code, §2001.0225, applies to major environmental rules the result of which are to exceed standards set by federal law, express requirements of state law, requirements of delegation agreements between the state and federal governments to implement a state and federal program, or rules adopted solely under the general powers of the agency instead of under a specific state law.

A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking does not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency, including practices, techniques, and technologies that make water use more efficient, by allowing permittees and applicants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for disposal of wastewater. The adopted rulemaking affects the same class of regulated entities, except that the entities may be able to reduce the dedicated land application acreage that is currently required by rule, which incentivizes and encourages wastewater permittees and applicants to reuse treated wastewater.

The adopted rulemaking modifies the state rules related to subsurface irrigation and land application of treated wastewater. This may have a positive impact on the environment, human health, or public health and safety; however, the adopted rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Therefore, the commission concludes that the adopted rulemaking does not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted rulemaking did meet the definition of a "Major environmental rule," it is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies only to a state agency's adoption of a "Major environmental rule" that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of the four requirements in Texas Government Code, §2001.0225(a). First, this rulemaking does not exceed standards set by federal law. Second, the adopted rulemaking does not exceed an express requirement of state law, but rather meets the requirements under state law to adopt rules suggesting best management practices for achieving the highest practicable levels of water conservation and efficiency, and regulate more efficiently, the land disposal of treated wastewater by identifying

practices, techniques, and technologies that make water use more efficient. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission adopts the rulemaking under Texas Water Code, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121. Therefore, the commission does not adopt the rulemaking solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, §2007.043. The following is a summary of that analysis. The specific purpose of the rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency by modifying TAC to allow permittees and applicants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for disposal of wastewater. The rulemaking will substantially advance this stated purpose by adopting language intended to regulate more efficiently the land application of treated wastewater by incentivizing and encouraging wastewater permittees and applicants to reuse treated wastewater.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on July 25, 2019. The comment period closed on July 30, 2019. The commission received comments from Barton Springs Edwards Aquifer Conservation District (BSEACD), City of Austin Intergovernmental Relations (City of Austin), City of Lago Vista, City of Marble Falls, Clean Water Action, Clean Water Action members (638 members), Greater Edwards Aquifer Alliance (GEAA), Green Civil Design, Hill Country Alliance, Lower Colorado River Authority (LCRA), LJA Engineering, League of Women Voters of Texas (LWVTX), Protect Our Water (POW), Representative Erin

Zwiener, Save Our Springs (SOS), Wimberley Valley Watershed Association (WVWA), and two individuals. One commenter was in support of the rulemaking and the rest of the commenters were in support of the rulemaking, but suggested changes.

Response to Comments

Comment

One individual expressed support for the rulemaking.

Response

The commission acknowledges this comment. No change was made in response to this comment.

Comment

Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA expressed support for proposed §222.83(e), which prohibits reducing the disposal site area by more than 50% of the area required based on the permitted flow and proposed §222.127(c), which prohibits the reduction of the required storage based on beneficial reuse. In order to protect against unauthorized discharge, the maximum reduction limit ensures that land will be available for disposal in case there is more reclaimed water available than can be reused and the prohibition of the reduction of the storage requirement is a critical safeguard in protecting against unauthorized discharge.

Response

The commission acknowledges these comments. No change was made in response to these comments.

Comment

In reference to proposed §222.127(c), which prohibits the reduction of the required storage based on beneficial reuse, the City of Lago Vista and Representative Erin Zwiener suggested allowing the reduction of storage based on beneficial reuse.

LCRA suggested allowing off-site storage at the user's site to count toward the storage requirement because a distributed system of storage with reclaimed water stored at the user's site could reduce storage requirements at the Texas Land Application Permit (TLAP) facility and allow TLAP permittees to expand treatment capacity without an expensive and possibly redundant or unnecessary expansion of the on-site storage at the TLAP facility.

Response

The prohibition of reducing the storage requirement is a necessary precaution to prevent unauthorized discharges in the event there is more reclaimed water than can be applied or when a user no longer needs water from the permitted facility.

The commission explored the option of allowing off-site storage at the site of the user. However, the commission determined this did not provide an adequate safeguard when a user no longer needs water from the permitted facility. Beneficial reuse under 30 TAC Chapter 210 (use of Reclaimed Water) is on an on-demand basis and, therefore, even with a contract, a user can refuse to accept reuse water on any given day, which renders on-site storage from contracted users as temporary and unreliable. Therefore, the prohibition of reducing the storage is necessary to prevent unauthorized discharges in these cases.

No change was made in response to these comments.

Comment

BSEACD, Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA recommended adding buffer zone requirements to beneficial reuse sites that are used to demonstrate firm reclaimed water demand.

BCEACD, Clean Water Action, and POW recommended requiring a minimum buffer zone between reuse sites and riparian and aquifer recharge features in order to protect ambient water quality.

GEAA and SOS stated that buffer zone protection is equally important to protect water quality whether the effluent application is through TLAP or beneficial reuse authorization.

SOS suggested applying the same buffer zone requirements from §309.13 (Unsuitable site Characteristics) and §222.81 (Buffer Zone Requirements) to sites that count toward a permittee's beneficial reuse credit.

The City of Marble Falls supported no buffer zone requirements. The City of Marble Falls expressed concern that the implementation of buffer zones could make pursuing a beneficial reuse credit infeasible for many communities.

Response

The commission respectfully disagrees with BSEACD, Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA. The rulemaking allows permittees to take credit for beneficial reuse under Chapter 210, but does not amend Chapter 210. If buffer zone requirements were included in this rulemaking, it would not prevent the use of reclaimed water within the buffer zone, it would only prohibit water use data from being included in calculating the beneficial reuse credit.

No change was made in response to these comments.

Comment

GEAA and SOS suggested requiring monitoring of surface water downstream of beneficial reuse areas to assess potential adverse effects from expanded reclaimed water irrigation under the proposed rulemaking. The data gathered could be used in future rulemaking to formulate regulations that protect against any observed water quality degradation from reclaimed water use.

SOS suggested flexible methods and timing that could allow volunteer citizen-scientists to collect water samples or suggest a small application fee for the beneficial reuse credit that could fund a study performed by the TCEQ or an independent entity.

Response

This rulemaking does not address monitoring requirements for Chapter 210 users. Therefore, requiring downstream monitoring is beyond the scope of this rulemaking.

Additionally, the commission foresees multiple complications such as determining where to sample or how many monitoring locations to include, particularly when the user list can change frequently. Further, surface water quality data would not clearly identify the source of degradation due to the nature of non-point sources. No change was made in response to these comments.

Comment

BSEACD, City of Austin, GEAA, LCRA, and SOS suggested a more flexible method of determining firm reclaimed water demand to allow applicants for a new TLAP or an existing facility seeking to expand to serve new growth. SOS recommends a

phased approach that allows the permitted flow to increase incrementally as developments are built out. Alternatively, SOS recommends allowing a permittee to submit a water balance for larger tracts to be irrigated to establish firm reclaimed water demand for future use of reclaimed water.

BSEACD and City of Austin recommended allowing less than two years of consecutive data be allowed to demonstrate firm reclaimed water demand for new developments under the following conditions: the application or renewal is sought to support new development; during the initial construction, the new development will include reclaimed water infrastructure (purple pipe) that will be operational at the time of occupancy; and firm reclaimed water demand for the new development is calculated using maximum building occupancies and fixture efficiencies for indoor demands and local precipitation and evapotranspiration data for outdoor demands.

Response

The commission agrees that there may be circumstances under which less than two years of data may be acceptable in demonstrating firm reclaimed water demand. The prohibition of prospective or speculative reclaimed water use to demonstrate firm reclaimed water demand in the proposed rules, at §309.23(h), was changed. Revised §309.23(h) now allows less than two years of data to demonstrate firm reclaimed water demand at the discretion of the executive director. For example, the commission believes a phased approach in increasing the permitted flow as the build-out of reuse infrastructure continues could be a situation where the executive director would allow less than two years of water use data. Additionally, under certain circumstances, a water balance could be used to demonstrate firm reclaimed water demand.

Comment

The City of Lago Vista and City of Marble Falls suggested allowing a 1:1 credit for proved reuse.

Response

The commission respectfully disagrees. The commission determined that counting 80% of the lowest month(s) for calculating the firm reclaimed water demand is a necessary safety factor to account for seasonal variability for outdoor uses. However, the proposed rulemaking does allow for 1:1 credit for proved reuse for indoor uses. No changes were made in response to these comments.

Comment

LJA Engineering suggests considering applying for a beneficial reuse credit be counted as a minor amendment since it would be a reduction in flow to permitted land application areas.

Response

The commission respectfully disagrees. The commission determined that granting a beneficial reuse credit to reduce the land application area is a major amendment because allowing the reduction of the land application area makes the permit less stringent. However, once a permit with a beneficial reuse credit has been issued, changing to a different phase would not require an amendment. Additionally, the commission determined that applying for a beneficial reuse credit would require a major amendment to adequately allow for public notice and public comment. No changes were made in response to this comment.

Comment

An individual commented that there is little information promoting rainwater as a viable alternative to the use of potable water for the purpose of irrigation. The individual believes that harvesting rainwater is a smart option.

Response

The commission agrees that harvesting rainwater is a good alternative to the use of potable water for the purpose of irrigation. However, the TCEQ does not regulate the use of rainwater under Chapter 222 and, therefore, is beyond the scope of this rulemaking. No change was made in response to this comment.

Comment

Green Civil Design suggested that the monthly volume used should only be required for the use being applied for (indoor, outdoor, or both). If the irrigation is metered separately and only outdoor use is being applied for there should not be a requirement to submit indoor use volumes.

Response

The commission agrees with this comment. Monthly volumes are required only for the type of use being applied for. No change was made in response to this comment.

Comment

Green Civil Design stated that some portion of irrigation systems will need to be supplemented with raw or potable water to meet peak demands. This supplementation needs to be considered when total nitrogen application is being evaluated. The total nitrogen should be tested after the mixing point with any supplemented water.

Response

Total nitrogen will be required to be tested at the wastewater treatment plant prior to mixing with any supplemental water. Total nitrogen should not be over-estimated for systems that need to supplement with raw or potable water as long as the volume of reclaimed water delivered to a user or provider, as required by §210.36 (Record Keeping and Reporting). No change was made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§222.1, 222.3, 222.5

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, authorizing the commission to issue permits for the discharge of waste or pollutants into or

adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ADMINISTRATIVE PROCEDURES

30 TAC §§222.31, §222.33

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034 which provides the

commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

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SUBCHAPTER C. SITING REQUIREMENTS AND EFFLUENT LIMITATIONS

30 TAC §§222.73, 222.75, 222.81, 222.83, 222.85, 222.87

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, authorizing the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to

review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

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SUBCHAPTER D. DESIGN CRITERIA

30 TAC §§222.115, 222.119, 222.127

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, authorizing the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat,

or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

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SUBCHAPTER E. OPERATIONS AND MAINTENANCE

30 TAC §§222.157, 222.159, 222.163

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, authorizing the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which

gives the commission the authority to set standards to prevent the disposal of waste that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 309. DOMESTIC WASTEWATER EFFLUENT LIMITATION AND PLANT SITING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§309.1 - 309.4, 309.10 - 309.14, and 309.20; and new §§309.21 - 309.25.

New §309.23 and §309.25 are adopted *with changes* to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3239), and, therefore, will be republished. The amendments to §§309.1 - 309.4, 309.10 - 309.14, and 309.20; and new §§309.21, 309.22, and 309.24 are adopted *without changes* to the proposed text as published and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

On March 14, 2016, the commission received a petition from the City of Austin (petitioner). The petitioner requested that the commission initiate rulemaking to amend 30 TAC Chapters 222 and 309 (Project Number 2016-033-PET-NR). The rulemaking would allow permittees and applicants to rely on the beneficial reuse of treated wastewater when calculating the amount of land required for land application of treated wastewater. This would allow permittees and applicants to reduce the acreage dedicated for land application that is currently required by rule. The commission approved the petition to initiate rulemaking with stakeholder involvement. The executive director held a stakeholder meeting on August 9, 2016, and the public was invited to comment on the petition. The public comment period was from August 28, 2016 through October 28, 2016.

Based on information presented at the stakeholder meeting, the executive director understands that the petition was made in response to increasing demands on water supplies and decreasing availability of contiguous or neighboring tracts of land that are large enough for domestic wastewater land application under the commission's current rules. This trend is currently appearing in parts of Central Texas where wastewater discharge to water in the state is restricted by the commission's rules and land application of treated wastewater may be the only permissible option. The executive director recognizes that land availability may also be limited in other parts of the state, and that practicable land application options are especially important wherever discharge to water in the state is restricted or infeasible.

The adopted revisions in this chapter and the corresponding adopted revisions in Chapter 222 will allow a reduction in the acreage required for land application of treated effluent by applying a "Beneficial reuse credit" to reduce the flow when calculating the required land application area. An applicant could also request to use a beneficial reuse credit to increase the permitted flow without reducing the land application acreage or to use a beneficial reuse credit to reduce the acreage and increase the permitted flow. The beneficial reuse credit will be based on the demonstrated firm reclaimed water demand. The effluent storage size required by Chapter 309 may not be reduced by the beneficial reuse credit. Adopted new §§309.21 - 309.25 will establish the criteria for demonstrating firm reclaimed water demand, the procedure for calculating and applying the beneficial reuse credit, and the requirements for a permittee who has been granted a beneficial reuse credit. The adopted amendments also correct inaccurate or outdated references to TAC or provide additional clarity.

Section by Section Discussion

The commission amends Chapter 309 to replace the term "disposal" with "land application" or "application" throughout to reflect that wastewater is beneficially applied and not just disposed of via land.

The commission amends Chapter 309 to replace the term "waste" with "wastewater" throughout to clarify that regulations in this chapter apply to wastewater.

The commission amends Chapter 309 to change surface water and groundwater to "water in the state" to be consistent with the definition of "water in the state" in Texas Water Code (TWC), §26.001.

The commission amends Chapter 309 to update references to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent terminology. These changes are non-substantive and may not specifically be discussed in the Section by Section Discussion of this preamble.

§309.3, *Application of Effluent Sets*

The commission amends §309.3(f)(2) to separate existing paragraph (2) into §309.3(f)(2)(A) and (B) to make it clear when Effluent Set 1 and Effluent Set 6 apply.

The commission amends §309.3 to move §309.3(f)(7) to §309.3(f) to define primary treatment prior to use in subsection (f).

§309.10, *Purpose, Scope, and Applicability*

The commission amends §309.10 to replace the word "chapter" with the word "subchapter" throughout the section. The contents

of the section are intended to apply to Subchapter B but not to Subchapters A and C.

§309.11, Definitions

The commission amends §309.11 to replace the word "chapter" with the word "subchapter" in the introductory paragraph. The terms defined in the section were not used in Subchapters A and C and were intended to apply in Subchapter B only. This change constrains applicability of the defined to terms to Subchapter B, which also helps ensure clear understanding and applicability of terms defined and used in adopted Subchapter D.

§309.12, Site Selection to Protect Water in the State

The commission amends §309.12 to change the title from "Site Selection To Protect Groundwater or Surface Water" to "Site Selection to Protect Water in the State" to be consistent with the definition of water in the state in TWC, §26.001.

§309.13, Unsuitable Site Characteristics

The commission amends §309.13(c)(1) - (3) and (5) to clarify that the requirements apply to both surface and subsurface irrigation sites and to ensure consistency with the rules in 30 TAC Chapter 290 (Public Drinking Water). The rule applies to all wastewater irrigation systems, including the soil absorption systems identified in the existing rule.

The commission amends §309.13(d) to change the required thickness for a synthetic liner for a wastewater facility surface impoundment located above a recharge zone of a major or minor aquifer from 30 mils to 40 mils to be consistent with the requirements in 30 TAC Chapter 217 (Design Criteria for Domestic Wastewater Systems).

§309.20, Land Application of Sewage Effluent

The commission amends §309.20 to change the title from "Land Disposal of Sewage Effluent" to "Land Application of Sewage Effluent." The term "land application" clarifies that the section is for beneficial application of wastewater rather than disposal via land.

The commission amends §309.20 to move §309.20(b)(3)(B) before Figure: 30 TAC §309.20(b)(3)(A) to improve readability. The commission consolidates Tables 1 - 3 into the same figure, Figure: 30 TAC §309.20(b)(3)(B).

The commission amends §309.20(b)(4) to correct a reference to parameters listed in paragraph (3)(C) to instead reference the parameters listed earlier in the paragraph.

§309.21, Purpose, Scope, and Applicability

The commission adopts new §309.21(a) to state the purpose and scope of the adopted Subchapter D (Beneficial Reuse Credit).

The commission adopts new §309.21(b) to specify that the rules in adopted Subchapter D apply to an entity who applies for or holds a Texas Land Application Permit (TLAP) for land application of treated domestic wastewater and is seeking to include a beneficial reuse credit in the permit. The adopted subchapter also applies to an entity who holds a permit that includes a beneficial reuse credit. Adopted Subchapter D is intended to give flexibility where discharge to water in the state is restricted by commission rules or is otherwise infeasible.

The commission adopts new §309.21(c)(1) to establish that the rules in adopted Subchapter D do not apply to a facility that is authorized to discharge under a Texas Pollutant Discharge Elimination System (TPDES) permit issued under 30 TAC Chapter

305 (Consolidated Permits). The executive director determined that since facilities authorized to discharge are not subject to the same land constraints as facilities that must dispose of their treated wastewater by land application, adopted Subchapter D should not apply to facilities authorized to discharge.

The commission adopts new §309.21(c)(2) to establish that the rules in adopted Subchapter D do not apply to industrial facilities. The executive director determined that industries have flexibility through 30 TAC Chapter 210, Subchapter E (Special Requirements for Use of Industrial Reclaimed Water), that is not available to domestic wastewater treatment facilities which, by necessity, are bound to the populated areas they serve.

The commission adopts new §309.21(d) to clearly state that adopted Subchapter D does not allow the discharge of wastewater or reclaimed water to water in the state. The adopted language specifically states that a discharge from a pond or storage unit at the user's site directly resulting from rainfall events is considered an unauthorized discharge. This encourages a user to properly manage the reuse water they receive from the permittee. Adopted Subchapter D does not affect whether a discharge of wastewater or reclaimed water to water in the state is subject to applicable enforcement action under other law and rules.

§309.22, Definitions

The commission adopts new §309.22(1) and (2) to define "Beneficial reuse credit" and "Firm reclaimed water demand." The adopted definitions are necessary to establish the concept of the beneficial reuse credit adopted in Subchapter D. The beneficial reuse credit reduces the amount of flow used for calculating the required land application area. The firm reclaimed water demand is the amount of water used by the permittee or authorized users for beneficial reuse and is used to calculate the beneficial reuse credit.

The commission adopts new §309.22(3) to define "Reclaimed water" to establish usage of the term as it relates to adopted Subchapter D and maintain consistency with Chapter 210 (Use of Reclaimed Water).

The commission adopts new §309.22(4) to define "Total monthly volume" to clarify how to calculate the beneficial reuse credit in adopted §309.24.

The commission adopts new §309.22(5) to define "Total nitrogen" and establish the composition of the pollutant to be tested in the treated effluent as required in adopted §309.25(c), discussed later in this preamble.

The commission adopts new §309.22(6) to define "User" as the term is defined in Chapter 210 for consistency and to establish usage of the term as it relates to adopted Subchapter D.

The commission adopts new §309.22(7) to define "Water use data" to clarify that data used in demonstrating firm reclaimed water demand may be reclaimed water use data or potable water use data from a user who commits to substituting reclaimed water for existing potable water use.

§309.23, Demonstrating Firm Reclaimed Water Demand

The commission adopts new §309.23(a) to establish the requirement to submit five years of consecutive data for each user, if available, to demonstrate firm reclaimed water demand. If five years of data is not available, a minimum of two consecutive years of water use data is required. The executive director determined that at least two years of water data is necessary to

support a user's demand as firm. Data submitted must be from the period immediately preceding the date the application is received.

The commission adopts new §309.23(b) to require the applicant to report the total monthly volume of water used. The applicant shall segregate indoor uses and outdoor uses in the monthly volumes submitted. The executive director needs this information to determine the beneficial reuse credit.

The commission adopts new §309.23(c) to clarify that water use data submitted for establishing firm reclaimed water demand may be from water use by the applicant or from other users. Contractual agreements with users for reclaimed water must be for a minimum term of five years to reasonably ensure that the user intends to use reclaimed water for the five-year term of the permit.

The commission adopts new §309.23(d) to require water use data submitted for establishing firm reclaimed water demand to be for the same type of use proposed. For example, if a user commits to using reclaimed water instead of potable water for toilet flushing at a particular facility, then the water use data must be for toilet flushing at that facility.

The commission adopts new §309.23(e) to specify the requirements for water use data submitted for establishing firm reclaimed water demand for each user: the amount of water used, the type of use, and the number of acres irrigated, if for an outdoor use. The amount of water used and type of use is necessary for calculating the beneficial reuse credit, as discussed later in this preamble. The number of acres irrigated for outdoor uses is necessary for estimating the application rate of reclaimed water.

The commission adopts new §309.23(f) to provide that the executive director may exclude a user's water data if the executive director determines that the user's water data is unreliable due to the user's noncompliance with state laws, rules, or permit conditions within the five-year period immediately preceding the date the application is received.

The commission adopts new §309.23(g) to provide that the executive director may deny a beneficial reuse credit if the applicant has had a violation that resulted in an enforcement action in the five-year period immediately preceding the date the application is received. All permit applications are subject to a compliance history review, as stated in 30 TAC Chapter 60 (Compliance History). The adopted rule ensures the executive director the discretion to consider an applicant's compliance history when reviewing a request for a beneficial reuse credit.

The commission adopts new §309.23(h) to allow less than two years of water use data to demonstrate firm reclaimed water demand at the discretion of the executive director. Less than two years of water use data may be considered when demonstrating firm reclaimed water demand, if the executive director determines that the data is reliable. For example, an entity that is building reclaimed water infrastructure may receive a phased permit that increases the permitted flow as the reclaimed water infrastructure is built-out. Additionally, under certain circumstances the executive director may accept a water balance to demonstrate firm reclaimed water demand. At adoption, §309.23(h) was amended in response to public comment. Proposed §309.23(h) prohibited the use of prospective or speculative water use data when applying for a beneficial reuse credit.

§309.24, Calculating and Using Beneficial Reuse Credit

The commission adopts new §309.24(a) to clarify the method for calculating beneficial reuse credit for outdoor uses. The commission adopts §309.24(a)(1) to clarify that, for users with less than five years of water use data, the beneficial reuse credit is calculated as 80% of the lowest single month of total outdoor water use. The commission adopts new §309.24(a)(2) to clarify that, for users with five or more years of water use data, it is calculated as 80% of the average of the lowest three months of total outdoor water use. Water use for outdoor purposes can vary dramatically due to climate and weather, therefore using the lowest month or average of the lowest three months of total water use mitigates some of the seasonal variation in outdoor use. Calculating 80% of the lowest month or lowest three months of total water use provides an additional margin of safety for unforeseen changes in water use rates. Allowing the average of the lowest three months for users with five or more years of data encourages historic or more established users and provides a more accurate representation of their water use.

The commission adopts new §309.24(b) to clarify the method for calculating beneficial reuse credit for indoor uses. The commission adopts new §309.24(b)(1) to clarify that, for users with less than five years of water use data, beneficial reuse credit is calculated as 100% of the lowest month of total water use.

The commission adopts new §309.24(b)(2) to clarify that, for users with five or more years of data, the beneficial reuse credit is calculated as 100% of the average of the lowest three months of total water use data. Water use for indoor purposes is not subject to the same degree of seasonal variation as outdoor use. Using the lowest month or average of the lowest three months of total water accounts for temporal variations, if present. For example, water use data for toilet flushing from a school building may decrease significantly during the summer months. Because indoor use is less variable than outdoor use, 100% of the lowest month or average of the lowest three months of total water use may be used in calculating the beneficial reuse credit. Allowing the average of the lowest three months for users with five or more years of data encourages historic or more established users and provides a more accurate representation of their water use.

The commission adopts new §309.24(c) to allow the beneficial reuse credit to be used when calculating the land application area required based on the hydraulic application rate. The applicant, if granted a beneficial reuse credit by the executive director, may reduce the permitted wastewater flow volume by the beneficial reuse credit when calculating the land application area required based on the hydraulic application rate for facilities that are regulated under Chapters 222 and 309. This allows an entity to reduce the required size of the land application site. An applicant could also foreseeably request to use a beneficial reuse credit to increase the permitted flow without changing the land application acreage or to change both the acreage and the permitted flow.

The commission adopts new §309.24(d) to prohibit reducing the land application site area by more than 50% of the area required based on the permitted flow. The applicant must have a land application site area that can receive at least 50% of the permitted flow, even if 100% of the effluent is used as reclaimed water. If an applicant who was granted a beneficial reuse credit in a previous permit action requests an increase in permitted flow, they must still satisfy this requirement. This requirement provides a reasonable margin of safety against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

The commission adopts new §309.24(e) to prohibit the reduction of the required storage. This applies to facilities that are regulated under Chapters 222 and 309. Effluent storage is especially necessary if the land application site acreage has been reduced by the beneficial reuse credit and the amount of reclaimed water distributed to users declines. Not allowing reductions in effluent storage provides an extra safety measure against unauthorized discharges (e.g., if a user is not able to accept reclaimed water).

The commission adopts new §309.24(f) to allow the use of water use data for a user with less than two years of data to recalculate the beneficial reuse credit during a permit renewal on a case-by-basis. Because changes in users do not require an amendment to the permit, the commission finds it appropriate to allow for newer users with less than two years of water use data to be included in the recalculation of the beneficial reuse credit during a renewal or in keeping track of their beneficial reuse credit.

§309.25, Requirements

The commission adopts new §309.25 to clarify the application requirements for an applicant seeking a beneficial reuse credit.

Adopted new §309.25(a)(1) requires the applicant to provide a list of users and irrigation areas considered in demonstrating firm reclaimed water demand. For users that propose to use the reclaimed water for irrigation, the list must also include the acreage and crops irrigated at each irrigation site. The executive director needs this information for the public record and for review and enforcement of the beneficial reuse credit.

Adopted new §309.25(a)(2) requires the applicant to submit a map of users using the applicant's reclaimed water. The executive director needs this information for the public record and for review and enforcement of the beneficial reuse credit.

Adopted new §309.25(a)(3) requires the applicant to submit the water use data used to calculate firm reclaimed water demand. The executive director will review the water use data for accuracy and eligibility.

Adopted new §309.25(a)(4) allows the executive director to require additional information as needed for reviewing the application. This may include additional information on firm reclaimed water demand users to provide the executive director with the information necessary to appropriately review the application.

Adopted new §309.25(a)(5) requires a permittee to apply for an amendment under Chapter 305 to obtain or change a beneficial reuse credit. For example, increasing the beneficial reuse credit to reduce the size of land application site would require a major amendment because it would make the permit less stringent by reducing the required land application area. Decreasing a beneficial reuse credit without decreasing the permitted flow would require a major amendment if it increases the required size of the land application site, potentially affecting adjacent landowners. Decreasing the beneficial reuse credit and the permitted flow by the same amount would require a minor amendment because this change would not result in less-restrictive permit conditions and would not affect adjacent landowners.

Adopted new §309.25(b)(1) requires an applicant to receive authorization in accordance with Chapter 210 before applying for a beneficial reuse credit. This requirement ensures that the applicant is an authorized provider of reclaimed water. The commission foresees that a new facility may be able to provide at least two years of data from proposed users and recognizes that a new facility would not be able to obtain authorization under Chapter 210 without an existing permit; therefore, the adopted

rule provides that the executive director may temporarily waive the requirement to have a Chapter 210 authorization if a new facility applicant provides the information required to demonstrate firm reclaimed water demand. The adopted rule requires the executive director to phase the permit for a new facility so that the beneficial reuse credit will not become effective until the applicant obtains the authorization required by Chapter 210.

Adopted new §309.25(b)(2) requires the permittee and users, as applicable, to maintain authorization under Chapter 210 during the term of the permit to which the beneficial reuse credit is applied. This requirement prevents unauthorized use of reclaimed water.

Adopted new §309.25(b)(3) limits the wastewater permit term to five years if a beneficial reuse credit has been granted. This requirement results in a more frequent review of the water use data from authorized users and provides a more frequent assessment of the permit requirements, which helps to proactively ensure that a facility that relies on a beneficial reuse credit will be able to operate without causing or contributing to a discharge to water in the state.

Adopted new §309.25(b)(4) requires a permit that includes a beneficial reuse credit to specify both the permitted flow limit (the total flow the facility is permitted to treat) and the flow that may be land applied, which is equal to the permitted flow minus the beneficial reuse credit. Both flow limits are necessary to ensure protection of the environment because they are derived in different ways and are used for different purposes. For example, the permitted flow is based on wastewater generation estimates and is used for treatment facility design, but the land application limit is based on a hydraulic or nutrient application rate suitable for plant uptake during irrigation and is used to determine the required size of the land application site.

Adopted new §309.25(b)(5) requires a permittee that is granted a beneficial reuse credit to have a contractual agreement to pump and haul unused treated effluent and requires the applicant to dispose of excess wastewater under the contractual agreement if: a user no longer needs the reclaimed water, a new user has not been contracted to accept the unused reclaimed water, the storage capacity is not adequate to store the unused reclaimed water, and additional application to the permitted land application area would exceed the permitted application rate or is otherwise prohibited by the permit, such as when the ground is saturated or frozen. The permittee may use an alternate method of disposal previously approved by the executive director. This requirement provides a safety mechanism in case the amount of reclaimed water actually used is less than the firm reclaimed water demand demonstrated when calculating the beneficial reuse credit. A permittee who has been granted a beneficial reuse credit must remain compliant with the application rate authorized in the permit and is not authorized to discharge wastewater into water in the state, even if a reclaimed water user no longer accepts reclaimed water from the permittee.

Adopted new §309.25(b)(6) requires a permittee who is granted a beneficial reuse credit to meet the effluent quality standards for Type II reclaimed water, as described in §210.33 (Quality Criteria and Specific Uses for Reclaimed Water). This rule will require the effluent limits appropriate for Type II reclaimed water to be incorporated into the permit. Failure to meet the effluent limits is a permit violation that may be subject to enforcement action. These limits are necessary to protect human health and the environment.

Adopted new §309.25(c)(1) requires a permittee who has been granted a beneficial reuse credit to notify the executive director of any changes in users or irrigation areas within 30 days after the change. This requirement provides the commission with accurate information on the users of reclaimed water. A change in users or in areas used for outdoor use is not an amendment to the permit.

Adopted new §309.25(c)(2) requires a permittee that has been granted a beneficial reuse credit to maintain monthly data of the amount of reclaimed water used by each user, type of use for each site, acreage of each site for irrigation, crops irrigated at each irrigation sites, and total nitrogen concentration of the treated effluent. This data shall be sent to the executive director by September 30th of each year. The executive director will use the monthly reclaimed water use data, area of irrigation sites, crops irrigated and total nitrogen concentration of the treated effluent to determine whether the beneficial reuse credit is still appropriate and to verify that reclaimed water is not being over-applied on irrigation sites. The permittee shall also submit to the executive director a recalculation of the beneficial reuse credit by September 30th of each year. Recalculating the beneficial reuse credit with the most recent year of data will help the executive director determine whether the beneficial reuse credit is still appropriate. However, the recalculation of the beneficial reuse credit does not change the beneficial reuse credit or the required land application area in the permit unless the permit is amended. As described in adopted new §309.24(f), the permittee may use water use data from users with less than two years of data for recalculating the beneficial reuse credit on a case-by-case basis, but not to change the beneficial reuse credit.

Adopted new §309.25(c)(3) states that if the recalculated beneficial reuse credit is reduced, the executive director may require a permit amendment. This allows the commission to amend permits as necessary to ensure that permits are protective of the environment.

Adopted new §309.25(c)(4) establishes the frequency of total nitrogen testing of the treated effluent. Total nitrogen shall be tested quarterly for the first year to provide a more comprehensive representation of the effluent quality. After the first year, total nitrogen may be sampled annually, upon approval of the executive director. Data on the total nitrogen concentration of the effluent, in conjunction with the amount of reclaimed water applied and the acreage of irrigation sites, allows the executive director to calculate the amount of nitrogen applied at outdoor use sites and determine whether nitrogen was over-applied.

Adopted new §309.25(c)(5) requires the permittee to submit their monthly effluent monitoring reports to the executive director. Currently, these reports are required to be maintained on site (for TLAPs) and be made available to commission staff upon request or during a permit action. The adopted rule will require permittees that have been granted a beneficial reuse credit to submit these monthly reports to the executive director, as is already required for TPDES permits. The adopted rule is necessary to verify that the permittee complies with adopted §309.25(b)(6) pertaining to effluent quality.

Adopted new §309.25(c)(6) states that the executive director may require additional limitations or more frequent testing based on the results submitted annually and with the application on a case-by-case basis. At adoption, §309.25(c)(6) was added in response to public comment.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. Texas Government Code, §2001.0225, applies to major environmental rules the result of which are to exceed standards set by federal law, express requirements of state law, requirements of a delegation agreements between state and the federal governments to implement a state and federal program, or rules adopted solely under the general powers of the agency instead of under a specific state law.

A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking does not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency, including practices, techniques, and technologies that make water use more efficient, by allowing permittees and applicants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for land application of wastewater. The adopted rulemaking affects the same class of regulated entities, except that the entities may be able to reduce the dedicated land application acreage that is currently required by rule, which incentivizes and encourages wastewater permittees and applicants to reuse treated wastewater.

The adopted rulemaking modifies the state rules related to subsurface irrigation and land application of treated wastewater. This may have a positive impact on the environment, human health, or public health and safety; however, the adopted rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Therefore, the commission concludes that the adopted rulemaking does not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted rulemaking did meet the definition of a "Major environmental rule," it is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies only to a state agency's adoption of a "Major environmental rule" that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds 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) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of the four requirements in Texas Government Code, §2001.0225(a). First, this rulemaking does not exceed standards set by federal law. Second, the adopted rulemaking does not exceed

an express requirement of state law, but rather meets the requirements under state law to adopt rules suggesting best management practices for achieving the highest practicable levels of water conservation and efficiency, and regulate more efficiently, the land application of treated wastewater by identifying practices, techniques, and technologies that make water use more efficient. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission adopts the rulemaking under TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121. Therefore, the commission does not adopt the rulemaking solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, §2007.043. The following is a summary of that analysis. The specific purpose of the rulemaking is to adopt rules that identify best management practices that achieve the highest practicable level of water conservation and efficiency by modifying TAC to allow permittees and applicants to rely on the beneficial reuse of treated wastewater as an additional alternative means to dispose of a portion of its treated wastewater when calculating the amount of land required for land application of wastewater. The rulemaking will substantially advance this stated purpose by adopting language intended to regulate more efficiently the land application of treated wastewater by incentivizing and encouraging wastewater permittees and applicants to reuse treated wastewater.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the rulemaking is identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) (Actions and Rules Subject to the Coastal Management Program), and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Public Comment

The commission held a public hearing on July 25, 2019. The comment period closed on July 30, 2019. The commission received comments from Barton Springs Edwards Aquifer Conservation District (BSEACD), City of Austin Intergovernmental Relations (City of Austin), City of Lago Vista, City of Marble Falls, Clean Water Action, Clean Water Action members (638 members), Greater Edwards Aquifer Alliance (GEAA), Green Civil Design, Hill Country Alliance, Lower Colorado River Authority (LCRA), LJA Engineering, League of Women Voters of Texas (LWVTX), Protect Our Water (POW), Representative Erin Zwiener, Save Our Springs (SOS), Wimberley Valley Watershed Association (WVWA), and two individuals. One commenter was in support of the rulemaking and the rest of the commenters were in support of the rulemaking, but suggested changes.

Response to Comments

Comment

One individual expressed support for the rulemaking.

Response

The commission acknowledges this comment. No change was made in response to this comment.

Comment

Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA expressed support for new §309.24(d), which prohibits reducing the disposal site area by more than 50% of the area required based on the permitted flow and new §309.24(e), which prohibits the reduction of the required storage based on beneficial reuse. In order to protect against unauthorized discharge, the maximum reduction limit ensures that land will be available for disposal in case there is more reclaimed water available than can be reused and the prohibition of the reduction of the storage requirement is a critical safeguard in protecting against unauthorized discharge.

Response

The commission acknowledges these comments. No change was made in response to these comments.

Comment

In reference to new §309.24(e), which prohibits the reduction of the required storage based on beneficial reuse, the City of Lago Vista and Representative Erin Zwiener suggested allowing the reduction of storage based on beneficial reuse.

LCRA suggested allowing off-site storage at the user's site to count toward the storage requirement because a distributed system of storage with reclaimed water stored at the user's site could reduce storage requirements at the TLAP facility and allow TLAP permittees to expand treatment capacity without an expensive and possibly redundant or unnecessary expansion of the on-site storage at the TLAP facility.

Response

The prohibition of reducing the storage requirement is a necessary precaution to prevent unauthorized discharges in the event there is more reclaimed water than can be applied or when a user no longer needs water from the permitted facility.

The commission explored the option of allowing off-site storage at the site of the user. However, the commission determined this did not provide an adequate safeguard when a user no longer needs water from the permitted facility. Beneficial reuse under Chapter 210 is on an on-demand basis and, therefore, even

with a contract, a user can refuse to accept reuse water on any given day, which renders on-site storage from contracted users as temporary and unreliable. Therefore, the prohibition of reducing the storage is necessary to prevent unauthorized discharges in these cases.

No change was made in response to these comments.

Comment

Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA expressed support for new §309.25(b)(5) that requires the permittee that is granted a beneficial reuse credit to have a contractual agreement to pump and haul unused treated effluent and requires the permittee to dispose of excess wastewater under the contractual agreement. This will guarantee that a permittee has a plan in place to dispose of excess effluent and prevent an unauthorized discharge.

Response

The commission acknowledges these comments. No change was made in response to these comments.

Comment

Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA expressed support for new §309.25(c)(5) that requires the permittee to submit their monthly effluent monitoring reports to the executive director. Currently, records regarding flow rates, irrigation volumes, and effluent quality are maintained by operators on-site and, therefore, the public does not have opportunity to review data except during contested case hearings. The availability of wastewater irrigation records for review by TCEQ staff and the public will increase operational accountability.

Response

The commission acknowledges these comments. No change was made in response to these comments.

Comment

Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA recommended strengthening §309.25(b)(6) that requires more stringent effluent limitations than Type II reclaimed water. The commenters expressed concern that the Type II effluent limitations are not sufficient to adequately protect surface water quality and request additional effluent standards that would not adversely impact sensitive creeks and streams, especially by minimizing the discharge of nitrogen and phosphorus.

SOS suggested higher treatment standards for reclaimed water being irrigated in the contributing zone of the Edwards Aquifer, particularly limits on nitrogen and phosphorus. Increases in these nutrients can cause algae blooms, lower dissolved oxygen levels, and harm to aquatic life in surface streams, springs, and groundwater.

GEAA and SOS stated that the City of Austin has performed studies that show nutrient increases in streams downstream of TLAP irrigation sites and, therefore, recommend nutrient loading standards similar to those for TLAPs be implemented for all irrigated beneficial reuse to prevent that degradation. Where a nutrient load calculation indicates the potential for application rates higher than what can be used by vegetation, effluent nutrient reduction should be required prior to beneficial reuse for landscape irrigation. SOS attached a copy of a study the City

of Austin performed, "Reclaimed Water Irrigation Water Quality Impact Assessment" (April 2016).

Response

The rulemaking includes Type II requirements as a minimum for facilities that are granted a beneficial reuse credit. The TCEQ has determined that requiring Type I for all permittees that are granted a beneficial reuse credit is unnecessary since not all users will be Type I. However, if the permittee provides reclaimed water for Type I reuse, the permittee would still be responsible for further treatment to the Type I standards.

The commission respectfully disagrees that limitations for nutrients should be added to all permits with a beneficial reuse credit. However, §309.25(c)(6) has been added to the rulemaking to state that the commission may require additional limitations or more frequent testing based on the results submitted annually and with the application on a case-by-case basis.

Comment

BSEACD, Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA recommended adding buffer zone requirements to beneficial reuse sites that are used to demonstrate firm reclaimed water demand.

BCEACD, Clean Water Action, and POW recommended requiring a minimum buffer zone between reuse sites and riparian and aquifer recharge features in order to protect ambient water quality.

GEAA and SOS stated that buffer zone protection is equally important to protect water quality whether the effluent application is through TLAP or beneficial reuse authorization.

SOS suggested applying the same buffer zone requirements from §309.13 (Unsuitable Site Characteristics) and §222.81 (Buffer Zone Requirements) to sites that count toward a permittee's beneficial reuse credit.

The City of Marble Falls supported no buffer zone requirements. The City of Marble Falls expressed concern that the implementation of buffer zones could make pursuing a beneficial reuse credit infeasible for many communities.

Response

The commission respectfully disagrees with BSEACD, Clean Water Action, Clean Water Action members, GEAA, Hill Country Alliance, LWVTX, POW, SOS, and WVWA. The rulemaking allows permittees to take credit for beneficial reuse under Chapter 210, but does not amend Chapter 210. If buffer zone requirements were included in this rulemaking, it would not prevent the use of reclaimed water within the buffer zone, it would only prohibit water use data from being included in calculating the beneficial reuse credit.

No change was made in response to these comments.

Comment

GEAA and SOS suggested requiring monitoring of surface water downstream of beneficial reuse areas to assess potential adverse effects from expanded reclaimed water irrigation under the proposed rulemaking. The data gathered could be used in future rulemaking to formulate regulations that protect against any observed water quality degradation from reclaimed water use.

SOS suggested flexible methods and timing that could allow volunteer citizen-scientists to collect water samples or suggest a

small application fee for the beneficial reuse credit that could fund a study performed by the TCEQ or an independent entity.

Response

This rulemaking does not address monitoring requirements for Chapter 210 users. Therefore, requiring downstream monitoring is beyond the scope of this rulemaking.

Additionally, the commission foresees multiple complications such as determining where to sample or how many monitoring locations to include, particularly when the user list can change frequently. Further, surface water quality data would not clearly identify the source of degradation due to the nature of non-point sources. No change was made in response to these comments.

Comment

BSEACD, City of Austin, GEAA, LCRA, and SOS suggested a more flexible method of determining firm reclaimed water demand to allow applicants for a new TLAP or an existing facility seeking to expand to serve new growth. SOS recommends a phased approach that allows the permitted flow to increase incrementally as developments are built out. Alternatively, SOS recommends allowing a permittee to submit a water balance for larger tracts to be irrigated to establish firm reclaimed water demand for future use of reclaimed water.

BSEACD and City of Austin recommended allowing less than two years of consecutive data be allowed to demonstrate firm reclaimed water demand for new developments under the following conditions: the application or renewal is sought to support new development; during the initial construction, the new development will include reclaimed water infrastructure (purple pipe) that will be operational at the time of occupancy; and firm reclaimed water demand for the new development is calculated using maximum building occupancies and fixture efficiencies for indoor demands and local precipitation and evapotranspiration data for outdoor demands.

Response

The commission agrees that there may be circumstances under which less than two years of data may be acceptable in demonstrating firm reclaimed water demand. The prohibition of prospective or speculative reclaimed water use to demonstrate firm reclaimed water demand in proposed §309.23(h), was changed at adoption. Revised §309.23(h) allows less than two years of data to demonstrate firm reclaimed water demand at the discretion of the executive director. For example, the commission believes a phased approach in increasing the permitted flow as the build-out of reuse infrastructure continues could be a situation where the executive director would allow less than two years of water use data. Additionally, under certain circumstances, a water balance could be used to demonstrate firm reclaimed water demand.

Comment

SOS expressed support for new §309.21(d) which considers a discharge from a user's pond or storage unit that is directly resulting from a rainfall event an unauthorized discharge. SOS stated this rule is important to close a potential loophole that would otherwise allow users to dispose of wastewater via "accidental" discharge.

Response

The commission acknowledges this comment. No change was made in response to this comment.

Comment

The City of Lago Vista and City of Marble Falls suggested allowing a 1:1 credit for proved reuse.

Response

The commission respectfully disagrees. The commission determined that counting 80% of the lowest month(s) for calculating the firm reclaimed water demand is a necessary safety factor to account for seasonal variability for outdoor uses. However, the adopted rulemaking does allow for 1:1 credit for proved reuse for indoor uses. No change was made in response to these comments.

Comment

LJA Engineering suggests considering applying for a beneficial reuse credit be counted as a minor amendment since it would be a reduction in flow to permitted land application areas.

Response

The commission respectfully disagrees. The commission determined that granting a beneficial reuse credit to reduce the land application area is a major amendment because allowing the reduction of the land application area makes the permit less stringent. However, once a permit with a beneficial reuse credit has been issued, changing to a different phase would not require an amendment. Additionally, the commission determined that applying for a beneficial reuse credit would require a major amendment to adequately allow for public notice and public comment. No change was made in response to this comment.

Comment

An individual commented that there is little information promoting rainwater as a viable alternative to the use of potable water for the purpose of irrigation. The individual believes that harvesting rainwater is a smart option.

Response

The commission agrees that harvesting rainwater is a good alternative to the use of potable water for the purpose of irrigation. However, the commission does not regulate the use of rainwater under Chapter 309 and, therefore, is beyond the scope of this rulemaking. No change was made in response to this comment.

Comment

Green Civil Design suggested that the monthly volume used should only be required for the use being applied for (indoor, outdoor, or both). If the irrigation is metered separately and only outdoor use is being applied for there should not be a requirement to submit indoor use volumes.

Response

The commission agrees with this comment. Monthly volumes are required only for the type of use being applied for. No change was made in response to this comment.

Comment

Green Civil Design stated that some portion of irrigation systems will need to be supplemented with raw or potable water to meet peak demands. This supplementation needs to be considered when total nitrogen application is being evaluated. The total nitrogen should be tested after the mixing point with any supplemented water.

Response

Total nitrogen will be required to be tested at the wastewater treatment plant prior to mixing with any supplemental water. Total nitrogen should not be over-estimated for systems that need to supplement with raw or potable water as long as the volume of reclaimed water delivered to a user or provider, as required by §210.36 (Record Keeping and Reporting). No change was made in response to this comment.

SUBCHAPTER A. EFFLUENT LIMITATIONS

30 TAC §§309.1 - 309.4

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

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Texas Commission on Environmental Quality

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SUBCHAPTER B. LOCATION STANDARDS

30 TAC §§309.10 - 309.14

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendments are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

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SUBCHAPTER C. LAND APPLICATION OF SEWAGE EFFLUENT

30 TAC §309.20

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The amendment is also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

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SUBCHAPTER D. BENEFICIAL REUSE CREDIT

30 TAC §§309.21 - 309.25

Statutory Authority

The new sections are adopted under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission, while TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; TWC, §26.0135, which provides the commission with the authority to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of wastewater or pollutants into or adjacent to water in the state; TWC, §26.034, which provides the commission with the authority, on a case-by-case basis, to review and approve plans and specifications for treatment facilities, sewer systems, and disposal systems that transport, treat, or dispose of primarily domestic wastes; TWC, §26.041, which gives the commission the authority to set standards to prevent the disposal of wastewater that is injurious to the public health; and TWC, §26.121, which gives the commission the authority to set standards to prohibit unauthorized discharges into or adjacent to water in the state.

The new sections are also adopted under TWC, §11.1271(e), which requires the commission, in conjunction with the Texas Water Development Board, to develop model water conservation programs for different types of water suppliers that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency achievable for each specific type of water supplier.

The new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 11.1271(e), 26.011, 26.0135, 26.027, 26.034, 26.041, and 26.121.

§309.23. *Demonstrating Firm Reclaimed Water Demand.*

(a) The applicant shall submit five years or more of consecutive water use data for each user, if available. If five years of data is not available, the applicant shall submit a minimum of two consecutive years of water use data for each user to demonstrate firm reclaimed water demand. Water use data must be from the period immediately preceding the date the application is received.

(b) The applicant shall submit the total monthly volume of water used by users satisfying subsection (a) of this section for indoor use and outdoor use, respectively.

(c) Water use data can be for reuse conducted by either the applicant or reclaimed water users that have a contract with the applicant to reuse the applicant's reclaimed water. The contract must be for a minimum term of five years.

(d) Water use data must be for the same type of reclaimed water use proposed (for example, a user's landscape irrigation data may not be used to support the user's dust control or toilet flushing use).

(e) For each user, water use data must include:

- (1) the amount of water used on a monthly basis;
- (2) the type of use of the water at each site; and
- (3) the number of acres irrigated at each site, if applicable.

(f) At the discretion of the executive director, a water user's data may not be counted toward the beneficial reuse credit if the executive director determines that the user's water data is unreliable due to the user's noncompliance with state laws, rules, or permit conditions within the five-year period immediately preceding the date the application is received.

(g) At the discretion of the executive director, an applicant may not be eligible for beneficial reuse credit if the applicant has been issued a violation that resulted in an enforcement case within the five-year period immediately preceding the date the application is received.

(h) At the discretion of the executive director, less than two years of water use data may be used to calculate the beneficial reuse credit.

§309.24. *Calculating and Using Beneficial Reuse Credit.*

(a) For outdoor uses.

(1) For users with less than five years of water use data, the beneficial reuse credit is calculated as 80% of the lowest total monthly volume of water used.

(2) For users with five or more years of water use data, the beneficial reuse credit is calculated as 80% of the average of the three lowest total monthly volumes of water use data submitted for the five years prior to the date the application is submitted. All users must have at least five consecutive years of data when taking the average of the lowest three months.

(b) For indoor uses.

(1) For users with less than five years of water use data, the beneficial reuse credit is calculated as 100% of the lowest total monthly volume of water used.

(2) For users with five or more years of water use data, the beneficial reuse credit is calculated as 100% of the average of the lowest three total monthly volumes of water use data submitted for the five years prior to the date the application is submitted. All users must have at least five consecutive years of data when taking the average of the lowest three months.

(c) When calculating the hydraulic application rate as described in §309.20(b)(3)(A) of this title (relating to Land Application of Sewage Effluent) or §222.83 of this title (relating to Hydraulic Application Rate) for subsurface area drip dispersal systems, the permitted flow may be reduced by the beneficial reuse credit.

(d) The size of the land application site area may not be reduced by more than 50% of the size required when calculating the hy-

draulic application rate using the permitted flow without the beneficial reuse credit.

(e) When calculating the required effluent storage as described in §309.20(b)(3)(B) of this title or §222.127 of this title (relating to Storage), the permitted flow may not be reduced by the beneficial reuse credit.

(f) For the purpose of recalculating the beneficial reuse credit and for renewing a permit, the executive director may accept water use data from users with less than two years of data on a case-by-case basis.

§309.25. *Requirements.*

(a) Application Requirements.

(1) The applicant must provide the executive director with a list of users and the type of use(s) for each user. For users that propose to use the reclaimed water for irrigation, the list must include the acreage and crop(s) irrigated for each irrigation area.

(2) The applicant must provide the executive director with a map showing the location of the water use sites at a scale specified by the executive director.

(3) The applicant must submit all water use data used to calculate firm reclaimed water demand.

(4) The executive director may request additional information as may be necessary for an adequate technical review of the application.

(5) For permits issued prior to the effective date of this subchapter, the permittee must apply for a permit amendment under Chapter 305 of this title (relating to Consolidated Permits) for approval of a new or approval of a change to an existing beneficial reuse credit.

(b) General Requirements.

(1) An applicant must receive authorization required by Chapter 210 of this title (relating to Use of Reclaimed Water) before applying for a beneficial reuse credit. The executive director may waive this requirement for a new facility if the executive director finds that the application contains all information required by §309.23 of this title (relating to Demonstrating Firm Reclaimed Water Demand). If a beneficial reuse credit is granted for a new facility, the permit must include:

(A) the requirements and conditions that apply to the regulated activity without considering the beneficial reuse credit, applicable from the date of permit issuance until the permittee receives authorization for reclaimed water use under Chapter 210 of this title; and

(B) the requirements and conditions that apply after the permittee receives authorization for reclaimed water use under Chapter 210 of this title.

(2) A permittee and, to extent applicable, a user must maintain authorization under Chapter 210 of this title during the term of the Texas Land Application Permit.

(3) The term of a permit that includes a beneficial reuse credit may not exceed five years.

(4) A permit that includes a beneficial reuse credit must include limits for both the permitted flow and the land application flow. The land application flow limit must be equal to the permitted flow limit minus the beneficial reuse credit.

(5) A permittee that is granted a beneficial reuse credit shall have a contractual agreement to dispose of unused treated effluent on an emergency basis, using the pump-and-haul method or another method

approved by the executive director. The permittee shall use the contracted disposal method if all of the following conditions are met:

- (A) a user of reclaimed water no longer needs the reclaimed water;
- (B) a new user has not been contracted to accept the reclaimed water;
- (C) the permitted facility does not have adequate capacity to store the unused reclaimed water; and
- (D) additional application to the permitted land application area would exceed the permitted application rate or is otherwise prohibited by the permit.

(6) A permittee that is granted a beneficial reuse credit must meet a minimum of Type II effluent quality as described in §210.33 of this title (relating to Quality Standards for Using Reclaimed Water).

(c) Reporting Requirements.

(1) If the users or the irrigation areas change, the permittee must provide the executive director with an updated list of users and irrigations areas within 30 days after the change. A change in user or area is not an amendment to the permit.

(2) A permittee that is granted a beneficial reuse credit shall submit the following to the executive director by September 30th of each year for the reporting period of September 1st to August 31st:

- (A) monthly data on the amount of reclaimed water used by each user;
- (B) the type of water use(s) for each user;
- (C) the acreage of each irrigation site, if applicable;
- (D) the crop(s) irrigated at each irrigation site, if applicable;
- (E) a recalculation of the beneficial reuse credit; and
- (F) the total nitrogen concentration of the effluent.

(3) If the recalculated beneficial reuse credit submitted in the annual report is reduced, the executive director may require a permit amendment.

(4) The total nitrogen concentration of the effluent shall be tested quarterly by grab sample for the first year of the permit term, after which the frequency for testing may be reduced to annually upon approval by the executive director.

(5) The permittee shall submit monthly effluent reports to the executive director in accordance with the effluent limitations and monitoring requirements of the permit.

(6) The executive director may require additional limitations or more frequent testing on a case-by-case basis.

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 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.82

The Comptroller of Public Accounts adopts amendments to §3.82, concerning exemption for churches or religious societies, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6996). The rules will not be republished.

The amendments implement the changes made by House Bill 2338, 86th Legislature, 2019, to Tax Code, §152.001(12) (Definitions).

The comptroller amends subsection (a) to address the exemption provided by Tax Code, §152.088 (Motor Vehicle Used for Religious Purposes). The comptroller amends the existing language to state the general rule that the taxes imposed by Tax Code, Chapter 152 do not apply to the sale or use of, or the receipts from the rental of, a motor vehicle used for religious purposes. The comptroller inserts the heading "Exemption from Motor Vehicle Sales Tax," and adds new paragraphs (1) - (4) addressing sales tax, use tax, and gross rental receipts tax, respectively.

The comptroller redesignates the remainder of current subsection (a) as new subsection (b), defining the term "motor vehicle used for religious purposes." The comptroller modifies the existing language to add two paragraphs. In paragraph (1), the comptroller revises the requirement that a vehicle be used primarily by a church or religious society. The amendment in paragraph (2) implements Tax Code, §152.001(12)(A) and (B), as revised by House Bill 2338.

The comptroller reletters subsequent subsections accordingly.

The comptroller amends relettered subsection (d) to use the term "motor vehicle" in place of "vehicle" for consistency with other sections of this title.

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted 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.

This amendment implements Tax Code, §152.001 (Definitions) and §152.088 (Motor Vehicles Used for Religious Purposes).

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 O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.280

The Comptroller of Public Accounts adopts an amendment to §3.280, concerning aircraft, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 6997). The rule will not be republished.

The comptroller amends the section to reflect the changes in Tax Code, §151.328 (Aircraft) made by Senate Bill 1214, 86th Legislature, 2019, effective September 1, 2019.

Subsection (e)(5)(C) is amended to remove the 30 mile limitation for travel to and from a location to perform specified agricultural services from the determination of whether an aircraft is exclusively used for agricultural purposes.

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted 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, §151.328, (Aircraft).

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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Special Counsel for Tax Administration

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34 TAC §3.320

The Comptroller of Public Accounts adopts amendments to §3.320, concerning the Texas emissions reduction plan sur-

charge; off-road, heavy-duty diesel equipment, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 7003). The rules will not be republished.

The comptroller amends the section to reflect the changes in Tax Code, §151.0515 (Texas Emissions Reduction Plan Surcharge) made by House Bill 3745, 86th Legislature, 2019.

The comptroller amends subsection (c) to update the title of §3.286.

New subsection (f) is added to include an expiration date to the surcharge. The surcharge expires on the last day of the 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 (Notice in *Texas Register* Regarding National Ambient Air Quality Standards for Ozone).

The comptroller did not receive any comments regarding adoption of the amendment.

This amendment is adopted 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, §151.0515 (Texas Emissions Reduction Plan Surcharge).

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 JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts adopts amendments to §3.1202, concerning warning notice signs, without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 7005). The rules will not be republished.

The amendments implement Senate Bill 21, 86th Legislature, 2019, effective September 1, 2019. The bill amends Health and Safety Code, §161.084 (Warning Notice) to update and add language to be included in the warning notice sign.

The comptroller amends subsection (d)(1)(A) to reflect statutory language to be included in the warning notice sign.

The comptroller adds new subparagraph (B) to include the temporary statutory language concerning persons born prior to September 1, 2001, to be included in the warning notice sign. The subsequent subparagraph is re-lettered.

The comptroller did not receive any comments regarding adoption of the amendment.

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

The amendments implement Health and Safety Code, §161.084 (Warning Notice).

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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William Hamner

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34 TAC §3.1205

The Comptroller of Public Accounts adopts amendments to §3.1205, concerning delivery sales of cigarettes (Health and Safety Code, Chapter 161, Subchapter R), without changes to the proposed text as published in the November 15, 2019, issue of the *Texas Register* (44 TexReg 7006). The rules will not be republished. The amendments implement Senate Bill 21, 86th Legislature, 2019, which is effective September 1, 2019. The bill amends provisions of the Health and Safety Code to raise the minimum legal age for the sale, distribution, possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products from 18 to 21 years of age; and Health and Safety Code, §161.081 (Definitions) to define a "minor" as a person under 21 years of age.

Throughout the section, the comptroller replaces the phrases "person younger than 18 years of age" or "individual younger than 18 years of age" with the defined term "minor."

The comptroller amends subsection (a)(4) by deleting the definition of the term "shipping container" pursuant to the SB 21 amendment that repealed Health and Safety Code, §161.455 (Shipping Requirements). The comptroller adds the definition of the term "minor" to mean a person under 21 years of age. The new paragraph also includes the exceptions to the age restrictions reflected in SB 21 but not included in the statutory definition of the term.

The comptroller deletes paragraph (5) by deleting the definition of the term "shipping document" pursuant to the SB 21 amendment that repealed Health and Safety Code, §161.455 (Shipping Requirements). The subsequent paragraph is re-lettered.

The comptroller amends subsection (b)(1)(A) to provide an exception to the requirement that out-of-state sellers obtain cigarette distributor's permits from the comptroller's office if they intend to make delivery sales to Texas customers. The out-of-state seller does not need a distributor's permit if the seller is purchasing Texas-stamped cigarettes.

The comptroller amends subsection (b)(1)(B) to update the title of the referenced §3.286.

The comptroller amends the headings to subsections (c)(3)(A) and (B) to remove the duplicated heading and to be more descriptive of the paragraphs' contents.

The comptroller deletes subsection (d) as SB 21 removed the shipping requirement language from the statute.

The comptroller did not receive any comments regarding adoption of the amendment.

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

The amendments implement Health and Safety Code, §§161.081 (Definitions), 161.082 (Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger Than 21 Years of Age Prohibited; Proof of Age Required), 161.083 (Sale of Cigarettes, E-Cigarettes, or Tobacco Products to Persons Younger Than 30 years of Age), 161.084 (Warning Notice), 161.085 (Notification of Employees and Agents), 161.251 (Definitions), and 161.252 (Possession, Purchase, Consumption, or Receipt of Cigarettes, E-Cigarettes, or Tobacco Products by Minors Prohibited); and Health and Safety Code, Subchapter R (Delivery Sales of Cigarettes and E-Cigarettes).

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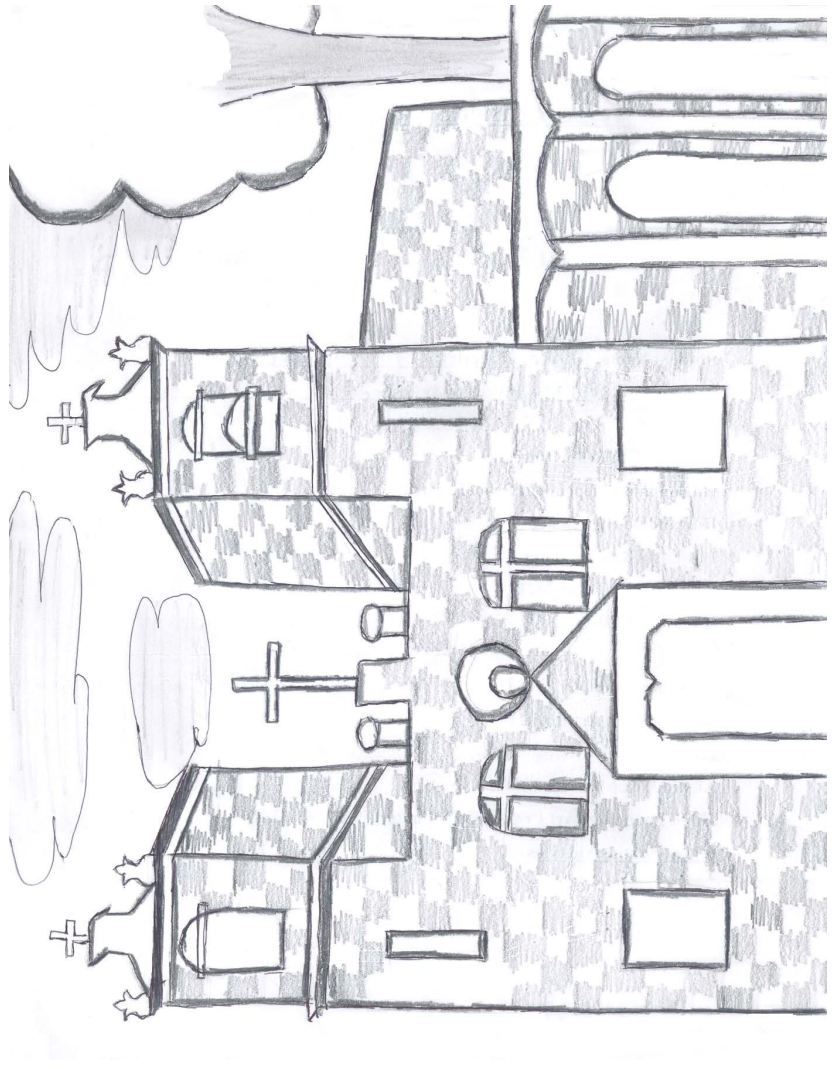
Comptroller of Public Accounts

Effective date: January 7, 2020

Proposal publication date: November 15, 2019

For further information, please call: (512) 475-2220





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 103, Health and Safety, pursuant to Texas Government Code, §2001.039. The rules being reviewed by TEA in 19 TAC Chapter 103 are organized under Subchapter AA, Commissioner's Rules Concerning Physical Fitness; Subchapter BB, Commissioner's Rules Concerning General Provisions for Health and Safety; Subchapter CC, Commissioner's Rules Concerning School Safety and Discipline; and Subchapter DD, Commissioner's Rules Concerning Video Surveillance of Certain Special Education Settings.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 103, Subchapters AA-DD, continue to exist.

The public comment period on the review of 19 TAC Chapter 103, Subchapters AA-DD, begins January 10, 2020, and ends February 10, 2020. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_Commissioner_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201904953

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: December 20, 2019



Adopted Rule Reviews

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 214, Secondary Containment Requirements for Underground Storage Tank Systems Located Over Certain Aquifers, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption 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 19, 2019, issue of the *Texas Register* (44 TexReg 3653).

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 214 are required because the rules implement Texas Water Code (TWC), §26.3476, by establishing requirements for underground storage tank systems over certain aquifers to incorporate a method of secondary containment. These rules are additional requirements beyond those in 30 TAC Chapter 213 and Chapter 334. TWC, §26.345, authorizes the commission to develop a regulatory program regarding underground and aboveground storage tanks, and to adopt rules necessary to carry out that purpose. These rules are necessary to protect and maintain the quality of groundwater resources in the state from environmental contamination that could result from releases of harmful substances stored in such tanks.

Public Comment

The public comment period closed on August 19, 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 214 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904950

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 295, Water Rights, Procedural, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption 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 19, 2019, issue of the *Texas Register* (44 TexReg 3653).

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 295 are required because the rules contain the procedural requirements to implement Texas Water Code (TWC), Chapter 11, Water Rights, and TWC, Chapter 18, Marine Seawater Desalination Projects. The rules include filing and fee requirements; descriptions of the public notices required for each application; information related to public hearings; special actions that may be taken by the

commission related to specific types of water rights; and requirements relating to the diversion, treatment, and use of marine seawater desalination projects. The rules are necessary for the regulation of state water by the commission.

Public Comment

The public comment period closed on August 19, 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 295 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904959

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 299, Dams and Reservoirs, 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 19, 2019, issue of the *Texas Register* (44 TexReg 3654).

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 299 are required because the chapter relates to dam: design; construction plans and specifications; construction; operation and maintenance; inspections; removal; emergency management and emergency action plans; gate operating plans; and site security. The Dam Safety Program regulates 4,029 dams and inspects 1,764 dams on a five-year frequency. The rules are needed to provide protection to the public and downstream property and to provide guidance and direction to the dam owner.

Public Comment

The public comment period closed on August 19, 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 299 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904951

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting, 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 19, 2019, issue of the *Texas Register* (44 TexReg 3654).

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 309 provide effluent limitations for domestic wastewater in Subchapter A, location standards in Subchapter B, and requirements for land disposal of sewage effluent in Subchapter C. Subchapter A includes effluent quality limitations for treated domestic sewage which are required to maintain water quality in accordance with the commission's surface water quality standards. Subchapter B establishes minimum standards for the location of domestic wastewater treatment facilities including definitions, considerations for determining site selection, and unsuitable site characteristics. Subchapter C outlines the components of a required technical report for the design of the wastewater disposal system as well as the requirements of irrigation disposal systems and percolation disposal systems.

The rules are needed to provide regulations to support the state water quality management program regarding domestic wastewater treatment facilities to minimize possible contamination of ground and surface water and the possibility of exposing the public to nuisance or unhealthy conditions.

Public Comment

The public comment period closed on August 19, 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 309 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201904949

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 350, Texas Risk Reduction Program, 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 19, 2019, issue of the *Texas Register* (44 TexReg 3654).

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 350 are required to provide a consistent corrective action process directed toward the protection of human health and the environment while balancing the economic welfare of the citizens of Texas. The rules establish assessment, monitoring, cleanup, reporting, post response action care, and financial assurance requirements that persons performing certain corrective actions must meet. The rules use a tiered approach that incorporates risk-based assessment techniques to help focus site investigations and determine appropriate response actions that are protective of human health, and when necessary, ecological receptors.

Public Comment

The public comment period closed on August 19, 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 350 continue to exist and read-

opts these sections in accordance with the requirements of Texas Government Code, §2001.039.



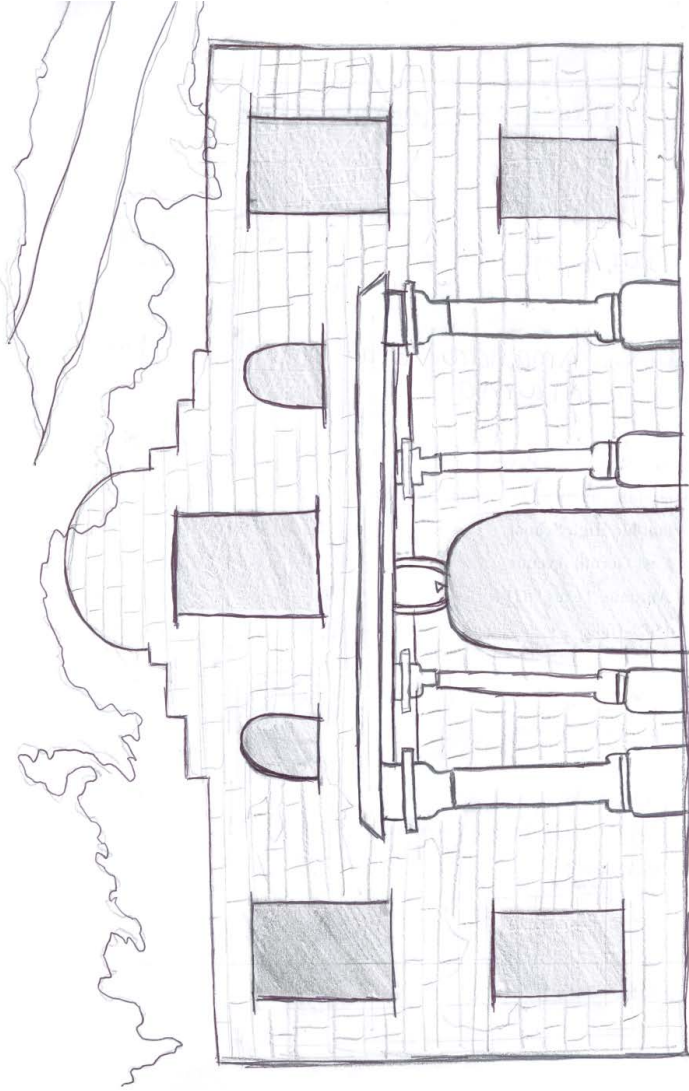
TRD-201904960

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



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: 13 TAC §7.125(a)(10)



TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LOCAL SCHEDULE EL (Fourth Edition) RETENTION SCHEDULE FOR RECORDS OF ELECTIONS AND VOTER REGISTRATION

This schedule establishes mandatory minimum retention periods for records that are associated with the conduct of elections, political candidacy, and the registration of voters. No local government office may dispose of a record listed in this schedule prior to the expiration of its retention period. A records control schedule of a local government may not set a retention period that is less than that established for the record in this schedule. Original paper records may be disposed of prior to the expiration of their minimum retention periods if they have been microfilmed or electronically stored pursuant to the provisions of the Local Government Code, Chapter 204 or Chapter 205, as applicable, and rules of the Texas State Library and Archives Commission adopted under those chapters. Actual disposal of such records by a local government is subject to the policies and procedures of its records management program.

Destruction of local government records contrary to the provisions of the Local Government Records Act of 1989 and administrative rules adopted under it, including this schedule, is a Class A misdemeanor and, under certain circumstances, a third degree felony (Penal Code, Section 37.10). Anyone destroying local government records without legal authorization may also be subject to criminal penalties and fines under the Public Information Act (Government Code, Chapter 552).

P. O. Box 12927 • Austin, Texas • 78711-2927 • (512) 463-7610

INTRODUCTION

The Government Code, Section 441.158, provides that the Texas State Library and Archives Commission shall issue records retention schedules for each type of local government, including a schedule for records common to all types of local government. The law provides further that each schedule must state the retention period prescribed by federal or state law, rule of court, or regulation for a record for which a period is prescribed, and prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the Commission. If applicable, the wording of the records series will match that of any federal or state law, rule of court, or regulation, and citation to law, rule, or regulation will be provided in the Remarks section.

Retention periods listed in this schedule apply to records in any medium. If records are stored electronically, they must remain available and accessible until the expiration of the retention period assigned by this schedule, along with any hardware or software required to access or read them. Electronic records may include electronic mail (e-mail), websites, electronic publications, or any other machine-readable format. Paper or microfilm copies may be retained in lieu of electronic records.

The use of social media application may create public records. Any content (messages, posts, photographs, videos, etc.) created or received using a social media application may be considered records and should be managed appropriately. The retention of social media records is based on content and function. Local governments will need to consult the relevant records retention schedule for the minimum retention periods.

Unless otherwise stated, the retention period for a record is in calendar years from the date of its creation. The retention period applies only to an official record as distinct from convenience or working copies created for informational purposes. Where several copies are maintained, each local government should decide which shall be the official record and in which of its divisions or departments it will be maintained. Local governments in their records management programs should establish policies and procedures to provide for the systematic disposal of copies.

A local government record whose retention period has expired may not be destroyed if any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record is initiated; its destruction shall not occur until the completion of the action and the resolution of all issues that arise from it.

A local government record whose retention period expires during any litigation, claim, negotiation, audit, public information request, administrative review, or other action involving the record may not be destroyed until the completion of the action and the resolution of all issues that arise from it.

If a record described in this schedule is maintained in a bound volume of a type in which pages were not meant to be removed, the retention period, unless otherwise stated, dates from the date of last entry.

If two or more records listed in this schedule are maintained together by a local government and are not severable, the combined record must be retained for the length of time of the component with the longest retention period. A record whose minimum retention period on this schedule has not yet expired and is **less than permanent** may be disposed of if it has been so badly damaged by fire, water, or insect or rodent infestation

as to render it unreadable, or if portions of the information in the record have been so thoroughly destroyed that remaining portions are unintelligible. If the retention period for the record is **permanent** in this schedule, authority to dispose of the damaged record must be obtained from the Director and Librarian of the Texas State Library and Archives Commission. A Request for Authority to Destroy Unscheduled Records (Form SLR 501) should be used for this purpose.

Certain records listed in this schedule are assigned the retention period of AV (as long as administratively valuable). This retention period affords local governments the maximum amount of discretion in determining a specific retention period for the record described.

Use of Asterisk (*)

The use of an asterisk in this edition of Local Schedule EL indicates that the record is either new to this edition, the retention period for the record has been changed, or amendments have been made to the description of or remarks concerning the record. An asterisk is not used to indicate minor amendments to grammar or punctuation.

Abbreviations Used in This Schedule

AV - As long as administratively valuable
CFR - Code of Federal Regulations
 FE - Fiscal year end
TAC - Texas Administrative Code
US - Until superseded

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RECORDS OF ELECTIONS AND VOTER REGISTRATION

RETENTION NOTES: (a) DESTRUCTION OF RECORDS. After expiration of the prescribed period for preserving voted ballots, election returns, other election records, or other records that are preserved under the Election Code, the records may be destroyed or otherwise disposed of unless, at the expiration of the preservation period, an election contest or a criminal investigation or proceeding in connection with an election to which the records pertain is pending. In that case, the records shall be preserved until the contest, investigation, or proceeding is completed and the judgment, if any, becomes final. [By law, Election Code, Section 1.013.]

(b) AUTHORITY OF THIS SCHEDULE - This schedule applies to and is binding upon county clerks, county tax assessor-collectors, county election administrators, election clerks in other local governments, and all other officials or employees of a local government who have custody of or maintain records of elections or voter registration. Many of the retention periods established in the Texas Election Code also apply to county executive committees of political parties who conduct their own primaries. These committees are not bound, however, by the destruction notice and records scheduling requirements of the Local Government Records Act.

PART 1: ELECTION RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-01	EARLY, ABSENTEE AND RESTRICTED BALLOT VOTING RECORDS [see also item number EL3100-10(b)]			

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-01a	EARLY, ABSENTEE, AND RESTRICTED BALLOT VOTING RECORDS	All of the following: absentee ballot requests and applications (except federal post card applications), cancellation of absentee ballot requests, notices of denial of cancellation requests, branch voting schedules and daily registers, lists of corrected ballots sent, untimely and rejected ballots, jacket envelopes (unless for use in subsequent election), carrier envelopes, early voting and absentee rosters, early voting and absentee election returns, voted early voting and absentee ballots, statements of challenge to early and absentee voters, notices of non-acceptance of early voting and absentee ballots, orders for the appointment of signature verification committees, late absentee ballot applications, disabled voter applications and affidavits, applications to vote restricted ballot, restricted ballot rosters, and presidential mail ballot applications.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law -Election Code, Sections 84.010, 84.037(a), 85.072(d), 86.009(d), 86.011(c), 87.043(c), 87.044(b), 87.121(e), 87.123(2), and 87.124.
EL3100-01b	EARLY, ABSENTEE, AND RESTRICTED BALLOT VOTING RECORDS	Precinct early voting list (listing voters in each precinct who have voted early or who have been mailed absentee ballots).	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 66.058(a). Retention Note: It is an exception to the retention period given for this record that one copy of each precinct early voting list prepared for a general election must be retained by the early voting clerk for 2 years after election day. By law - Election Code, Section 87.122(d).
EL3100-01c	EARLY, ABSENTEE, AND RESTRICTED BALLOT VOTING RECORDS	Federal post card applications requesting absentee ballot.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 66.058(a). Retention Notes: a)An application requesting a ballot for more than one election shall be preserved for the period for preserving the precinct election records for the last election for which the application is effective. By law – Election Code, Section 101.054(d). b) If the federal postcard application is used as a voter registration document follow the retention period for EL3150-03(a).

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-02	ELECTION CONTRACTS	Contracts, leases, or agreements for election services or the use of voting machines, including written approvals from the Secretary of State, if such approval is required.	4 years after the expiration or termination of the instrument according to its terms.	Retention Note: In counties, the retention period applies only to the copy of the contract maintained by the county elections officer. Copies of the contract filed with and maintained by the county treasurer, county auditor, or the county judge need only be retained as long as administratively valuable.
EL3100-03	ELECTION MINUTES, NOTICES, AND ORDERS			
EL3100-03a	ELECTION MINUTES, NOTICES, AND ORDERS	Minutes of governing body concerning elections.	PERMANENT.	
EL3100-03b	ELECTION MINUTES, NOTICES, AND ORDERS	Posted or published notices of election, including records (e.g., affidavits of publication, record of posting locations, or lists of voters to whom notices are mailed) which document the time, place, and manner of notice.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 4.005(d).
EL3100-03c	ELECTION MINUTES, NOTICES, AND ORDERS	Election orders and proclamations. (1) Ordering an election. (2) Relating to multiple elections or election procedures (e.g., order adopting a voting system; order appointing a county elections administrator).	Follow retention periods for Precinct Election Records [EL3100-10a]. AV if recorded in the minutes of the governing body; PERMANENT if not recorded.	By law - Election Code, Section 3.008(a). Retention Note: Election Code Section 3.008(b) requires that the date and nature of an election ordered by a political subdivision be entered in the minutes of its governing body.
EL3100-04	ELECTION OFFICER RECORDS			Retention Note: Records in this group include any records of the types listed relating to early voting. For certificates of appointment of watchers see item number EL3100-10(a).

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-04a	ELECTION OFFICER RECORDS	<p>Orders of appointment of election judges, including memoranda of emergency appointments, if applicable.</p> <p>(1) Single election appointments.</p> <p>(2) Term appointments.</p>	<p>Follow retention periods for Precinct Election Records [EL.3100-10a].</p> <p>Retain until end of term for which the appointment is made or follow the retention periods for Precinct Election Records [EL.3100-10a] in the last election in which the appointee serves under the order, whichever later.</p>	<p>By law - Election Code, Sections 32.007(c) and 32.008(c).</p> <p>By law - Election Code, Section 32.008(c).</p>
EL3100-04b	ELECTION OFFICER RECORDS	Lists of recommended election judges or other officers.	AV after appointments made.	
EL3100-04c	ELECTION OFFICER RECORDS	<p>Statements of compensation due election officers.</p> <p>(1) Originals.</p> <p>(2) Copies.</p>	<p>FE + 3 years.</p> <p>Follow retention periods for Precinct Election Records [EL.3100-10a].</p>	By law -Election Code, Section 32.094(e).

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-05	ELECTION PETITIONS		2 years after election day if petition results in an election or 2 years after date of filing if no election results.	<p>Retention Notes: a) This record group includes petitions for the formation of governments, local option elections (including applications), and such other issues permitted by law. It does not include petitions for a place on the ballot; see item number EL3125-02(a).</p> <p>b) Some election petitions presented to commissioners' courts are required by law to be recorded by county clerks. The retention period applies only to filed copies of petitions. The retention period for recorded copies is that assigned in the Local Schedule CC (Records of County Clerks) to the record in which the petition is recorded.</p> <p>See item number EL3100-10 for precinct level election returns.</p> <p>By law - Election Code, Sections 67.007(e) and 67.008(d).</p>
EL3100-06	ELECTION RETURN RECORDS			
EL3100-06a	ELECTION RETURN RECORDS	County election returns (copies of reports submitted by county clerks or county election administrators to the Secretary of State).	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Sections 67.007(e) and 67.008(d).
EL3100-06b	ELECTION RETURN RECORDS	Election return record or register maintained by local canvassing authorities.	PERMANENT.	By law - Election Code, Section 67.006(e). Retention Note: If the tabulation of election returns by a canvassing authority is done in a separate document rather than being entered directly into the election record or register, the separate tabulation must be retained for 22 months after election day in accordance with Election Code, Section 67.004(e). Obsolete record.
EL3100-07	FRAUD IN CONSTITUTIONAL AMENDMENT ELECTIONS, REPORTS OF	Reports filed with county clerks of alleged fraud, misconduct, or irregularity in constitutional amendment elections.	PERMANENT.	
EL3100-08	PRECINCT BOUNDARY RECORDS			

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-08a	PRECINCT BOUNDARY RECORDS	Notices of changes to precinct boundaries, including those filed with and maintained by voter registrars.	Effective date of change + 1 year.	By law - Election Code, Section 42.036(g), for those maintained by issuing authority in counties with a population of one million or more; by authority of this schedule for those in all other counties and for those maintained by voter registrars.
EL3100-08b	PRECINCT BOUNDARY RECORDS	Maps of precinct boundary changes.	One copy of each PERMANENT.	
EL3100-09	PRECINCT CONVENTION RECORDS	Records of the proceedings, lists of persons in attendance at precinct conventions, and lists of delegates chosen to represent the precinct at county or senatorial district conventions.	AV.	Obsolete record maintained by county clerks.
EL3100-10	PRECINCT ELECTION RECORDS			

Record Number	Record Title	Record Description	Retention Period	Remarks
*EL3100-10a	PRECINCT ELECTION RECORDS	All of the following: signature rosters; combination forms; provisional ballot lists; provisional ballot affidavit envelopes; summaries of provisional ballots cast; certificates of appointment of watchers; precinct returns; ballot registers/tally lists; voted, spoiled, defective, unused, undistributed, and specimen ballots; record of incorrect ballots destroyed; redistributed ballot receipts; ballot distribution record; unofficial tabulation of ballot results; official tabulation of precinct results; voting machine inspection and testing records; notice of voting machine inspections; voting machine opening and closing certificates; paper ballot write-in affidavits; voting machine printouts; ballot box seal record; ballot box certificates and seals; ballot box receipts; certificate of successful and records of unsuccessful tests of automatic tabulating equipment; testing ballots, and requests for and retractions of, if applicable, extension of security period on voting machines. This series includes any records of the types listed relating to early voting.	Election day + 22 months.	<p>In addition to the general retention period set for precinct election records in Election Code, Section 66.058 (see retention note on page 5), the following provisions affirm the same retention period: Election Code, Sections 51.007(b), 51.008(d), 52.0064(d), 52.007(c), 66.056(d), 67.004(f), 125.064, 127.064(c), 127.068(a, d), 127.099(b), and 146.031(e).</p> <p>Retention Note: If new ballots are prepared to correct mistakes, the incorrect ballots must be destroyed in accordance with the provisions of Election Code, Section 52.0064.</p>
EL3100-10b	PRECINCT ELECTION RECORDS	<p>Voter registration lists (original, revised original, and supplemental) and registration corrections lists, including those used in early voting.</p> <p>(1) Arising from elections held prior to March 1, 1986.</p> <p>(2) Arising from elections held on March 1, 1986 or later.</p>	<p>AV.</p> <p>Return to voter registrar.</p>	<p>See Part 3 of this schedule.</p> <p>Retention Note: Lists of registered voters used in primary elections prior to September 1, 1987 and maintained by the general custodian of election records may be destroyed at option. Such lists used in primary elections after September 1, 1987 are returned to the voter registrar. See item number EL3150-06(d).</p>

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-10c	PRECINCT ELECTION RECORDS	Poll lists.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 66.058 (a, g). Retention Note: It is an exception to the retention period given for this record that one copy of each poll list used in a primary election must be retained by the general custodian of election records for 22 months. By law - Election Code, Section 172.114.
EL3100-10d	PRECINCT ELECTION RECORDS	Mechanical machine ballot labels.	AV.	Obsolete record.
EL3100-10e	PRECINCT ELECTION RECORDS	Lists of certified write-in candidates.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 146.031(e).
EL3100-10f	PRECINCT ELECTION RECORDS	Election stub box certificates maintained by district clerks.	AV.	Obsolete record.
EL3100-11	RECOUNT RECORDS			
EL3100-11a	RECOUNT RECORDS	Recount reports (of both recount committees and recount supervisors, including associated tally lists).	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Sections 213.012(c) and 213.055(c).

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3100-11b	RECOUNT RECORDS	<p>Records relating to the request for and conduct of a recount, including all of the following: initial, expedited, and supplementary recount petitions, with associated amendments, affidavits, and certifications; applications for inclusion of remaining paper ballot precincts; recount notices and other notices involved in the conduct of recounts; requests for specific counting method; records of recount costs; and file copies of statements of cost.</p> <p>(1) Records of the type described maintained by a person serving only as recount coordinator or by a person serving as both recount coordinator and recount supervisor.</p> <p>(2) Records of the type described maintained by a person serving as recount supervisor only.</p>	<p>Follow retention periods for Precinct Election Records [EL3100-10a], or 60 days after recount canvass completed, or 30 days after assessed recount costs settled, or 30 days after outstanding costs referred for collection, whichever longer.</p> <p>Follow retention periods for Precinct Election Records [EL3100-10a], or 60 days after recount costs for payment of claimants certified, or 6 months after cost statement is delivered to recount coordinator if assessed against a person, whichever longer.</p>	<p>By law - Election Code, Section 211.007(b-c).</p> <p>By law - Election Code, Section 211.007(d).</p>

PART 2: RECORDS OF CANDIDACY AND CAMPAIGN FINANCE

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3125-01	CAMPAIGN FINANCE REPORTS AND FILINGS			
EL3125-01a	CAMPAIGN FINANCE REPORTS AND FILINGS	Campaign contribution and expenditure statements (including annual reports of unexpended contributions).	Date of filing + 2 years.	By law - Election Code, Section 254.040.
EL3125-01b	CAMPAIGN FINANCE REPORTS AND FILINGS	Designations of campaign treasurers, including notices of termination.	2 years after appointment terminated.	By law - Election Code, Section 252.014. Retention Note: See Election Code, Section 252.0131, for a procedure that clerks may use to terminate the campaign treasurer appointment of an inactive candidate or political committee.
EL3125-02	CANDIDACY APPLICATIONS AND CERTIFICATIONS			
EL3125-02a	CANDIDACY APPLICATIONS AND CERTIFICATIONS	Applications and any accompanying petitions for place on ballot, including any rejection notices and withdrawal of petition signature requests.	Election day + 2 years.	By law - Election Code, Section 141.036.
EL3125-02b	CANDIDACY APPLICATIONS AND CERTIFICATIONS	Certifications of candidates (including certifications of replacement nominees by party executive committees). (1) Copy maintained by authority to whom application for a place on ballot is made. (2) Copy maintained by authority responsible for preparation of official ballot.	AV after election day. Election day + 2 years.	
EL3125-02c	CANDIDACY APPLICATIONS AND CERTIFICATIONS	Declarations of intent to run as an independent candidate.	Day after general election day.	By law - Election Code, Section 142.003.
EL3125-02d	CANDIDACY APPLICATIONS AND CERTIFICATIONS	Declarations of write-in candidacy.	Election day + 2 years.	By law - Election Code, Section 146.028.

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3125-02e	CANDIDACY APPLICATIONS AND CERTIFICATIONS	Withdrawal of candidacy requests.	Election day + 2 years.	
EL3125-03	PARTY CERTIFICATIONS AND NOTICES			
EL3125-03a	PARTY CERTIFICATIONS AND NOTICES	Lists and certifications of party candidates in primary elections.	Day after the general primary election day.	
*EL3125-03b	PARTY CERTIFICATIONS AND NOTICES	Notices or lists of persons elected as party officers.	US.	
*EL3125-04	FINANCIAL DISCLOSURE STATEMENTS OF LOCAL GOVERNMENT OFFICERS AND CANDIDATES	Financial statements of local government officers or candidates of local government offices required to be filed with the county or city clerk, as applicable. a. For elected officials. b. For non-elected candidates.	Date of termination as officer + 2 years. Date of termination of campaign treasurer appointment + 2 years.	By law – Local Government Code, Section 145.007(c); 159.007(c).

PART 3: VOTER REGISTRATION RECORDS

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-01	CHALLENGE TO REGISTRATION RECORDS	Records relating to challenges by the voter registrar or another registered voter to the registration of an applicant or a voter and similar records relating to the challenge by a voter resulting in rejection of an application or cancellation of registration by the voter registrar.		

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-01a	CHALLENGE TO REGISTRATION RECORDS	Notices of challenge, requests for and notices of hearing, affidavits of argument or evidence, statements of challenge (if challenge is by another registered voter), and copies of petitions for review in cases appealed to a district court.	2 years from, as applicable: 1) Date of notice of challenge or cancellation, if no hearing sought by voter. 2) Date of written determination of challenge. 3) Date of judgment of district court if adverse determination appealed.	
EL3150-01b	CHALLENGE TO REGISTRATION RECORDS	Written determinations of challenge.	Date of rejection of application or cancellation of registration + 2 years.	By law – Election Code, Section 13.102(d); 15.142(c).
EL3150-02	VOLUNTEER DEPUTY REGISTRAR RECORDS			
EL3150-02a	VOLUNTEER DEPUTY REGISTRAR RECORDS	Certificates of appointment.	Termination of appointment + 2 years.	By law - Election Code, Section 13.035(d)
EL3150-02b	VOLUNTEER DEPUTY REGISTRAR RECORDS	Applications for appointment.	AV.	
EL3150-02c	VOLUNTEER DEPUTY REGISTRAR RECORDS	Written notices of termination.	AV.	
EL3150-03	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION			

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-03a	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Voter registration applications and the following records that the Election Code requires be maintained in association with application files: authorizations to vote by affidavit; requests for replacement certificates; notices of change in registration information (including hand-corrected registration certificates submitted by voters); returned renewal certificates; abstracts of death, probate, mental incompetency, felony conviction, and disqualification in an election contest; requests for exemption from showing photo ID due to a permanent disability; lists of person disqualified from jury service because of lack of citizenship; and written notices to voter of investigation of registration status, written responses from voters, proofs of citizenship provided by voters, and memoranda of oral responses.	Date of rejection or cancellation of registration + 2 years.	By law - Election Code, Section 13.102(d).
EL3150-03b	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Notices of change of residence of voters from other voter registrars.	Date of cancellation of registration + 2 years.	
EL3150-03c	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Notices of applications for limited ballot from early voting clerks in other counties.	Date of cancellation of registration + 2 years.	
EL3150-03d	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Notices of voter registration cancellation and reinstatement.	AV.	
EL3150-03e	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Sworn statements of death submitted under Election Code, Section 16.031(b) (3).	Date of cancellation of registration + 2 years.	

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-03f	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Periodic reports from the Secretary of State on deceased persons in a county.	AV.	Obsolete Record.
*EL3150-03g	VOTER REGISTRATION APPLICATIONS AND ASSOCIATED DOCUMENTATION	Supporting documentation for personal information confidentiality under Election Code, Section 13.004.	Date of rejection or cancellation of registration + 2 years.	By law – Election Code, Section 13.004(e).

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-04	VOTER REGISTRATION CERTIFICATES			<p>Retention Notes: a) Beginning in 1967 with the repeal of poll taxes, voter registration procedures in Texas were subject to frequent change. It was not until 1975 that the current system began to emerge in the Election Code. Consequently, for the purposes of records retention only, the term "date of cancellation" in this record group means, as applicable:</p> <ol style="list-style-type: none"> 1) from the date registration is cancelled for any of the reasons cited in Chapter 16, Election Code; 2) from the date an initial registration certificate or its former equivalent expired under prior law (note that the issuance of a renewal certificate under current law does not constitute expiration of the initial certificate); or 3) from the date the information on an initial registration certificate or its former equivalent was transcribed into a new format as may have been required or permitted by new statutory requirements (note that the issuance of a renewal certificate under current law in a different format from the initial certificate does not constitute a transcription). <p>b) Election Code, Section 15.143 provides: "The registrar may maintain the active or inactive certificate file as information stored in a form suitable for use with electronic data processing equipment. After the appropriate information is stored, the registrar may destroy or otherwise dispose of a duplicate certificate." By law - Election Code, Section 15.142(c).</p>
EL3150-04a	VOTER REGISTRATION CERTIFICATES	Duplicate initial registration certificates.	Date of cancellation of registration + 2 years.	

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-04b	VOTER REGISTRATION CERTIFICATES	Corrected registration certificates issued by voter registrar.	Date of cancellation of registration + 2 years.	Retention Note: A duplicate original registration certificate replaced by a corrected certificate need be retained only as long as administratively valuable after issuance of the corrected certificate.
EL3150-04c	VOTER REGISTRATION CERTIFICATES	Undelivered/returned renewal certificates.	Date of cancellation of registration + 2 years.	
EL3150-04d	VOTER REGISTRATION CERTIFICATES	Original registration record sheets or cards.	AV.	Obsolete record required of voter registrars from 1971 to 1975.
EL3150-05	VOTER REGISTRATION CONTRACTS	Contracts, leases, or agreements for voter registration services, including written approvals from the Secretary of State, if such approval is required.	4 years after the expiration or termination of the instrument according to its terms.	
EL3150-06	VOTER REGISTRATION LISTS AND RELATED DOCUMENTATION			Retention Note: It is an exception to the retention periods given for (a) and (c) in this record group that any list of registered or qualified voters dated 1967 or earlier must be retained PERMANENTLY for historical reasons. This exception applies to any such lists in the custody of a tax assessor-collector, county clerk, or any other county official.
EL3150-06a	VOTER REGISTRATION LISTS AND RELATED DOCUMENTATION	Master voter registration list of all registered voters in a county.	US.	
EL3150-06b	VOTER REGISTRATION LISTS AND RELATED DOCUMENTATION	Change lists, or similar documentation providing an audit trail, used to correct or update master voter registration list.	2 years.	
EL3150-06c	VOTER REGISTRATION LISTS AND RELATED DOCUMENTATION	One copy of each original, supplemental, corrected, or revised original list of registered voters provided to election authorities for use in countywide elections. (1) Lists for use in presidential elections. (2) Lists for use in non-presidential elections.	Election day + 4 years. Election day + 2 years.	By law - Election Code, Section 18.011(b). By law - Election Code, Section 18.011(b).

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-06d	VOTER REGISTRATION LISTS AND RELATED DOCUMENTATION	Original, supplemental, corrected, or revised original lists of registered voters used in precincts and returned to the voter registrar in Envelope No. 4.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 66.058(a, g).
EL3150-06e	VOTER REGISTRATION LISTS AND RELATED DOCUMENTATION	Registration omissions lists.	Follow retention periods for Precinct Election Records [EL3100-10a].	By law - Election Code, Section 66.058(a, g).
EL3150-07	VOTER REGISTRATION RECORDS (OBSOLETE)			
EL3150-07a	VOTER REGISTRATION RECORDS (OBSOLETE)	Applications, proofs of eligibility, and notices of eligibility relating to voter registration of persons, resident of the state for more than 60 days but less than a year, wishing to vote in presidential elections.	AV.	Maintained by county clerks from 1967 to 1975.
EL3150-07b	VOTER REGISTRATION RECORDS (OBSOLETE)	Registration record of women voters registering to vote in 1918.	PERMANENT.	Retention Note: This record, if it has survived in a county, may appear either as a formal register or as duplicate certificates. Any form of record of this initial registration of women voters must be retained PERMANENTLY for historical reasons.
EL3150-07c	VOTER REGISTRATION RECORDS (OBSOLETE)	Lists of registered voters maintained under the Registration Act of 1870.	PERMANENT.	Maintained by district clerks from 1870 to 1876.
EL3150-07d	VOTER REGISTRATION RECORDS (OBSOLETE)	Poll tax receipts (including exemption receipts).	AV.	In the absence of a list of qualified voters (see retention note for item number EL3150-06) for a given year, this schedule recommends, but does not require, that the poll tax receipts and exemption receipts for the same year be retained PERMANENTLY. Retention Note: The retention period applies to poll tax records in the custody of a county tax assessor-collector, county clerk, county judge, or any other county official.

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-08	VOTER REGISTRATION REPORTS AND STATEMENTS			
EL3150-08a	VOTER REGISTRATION REPORTS AND STATEMENTS	Annual registration statements submitted to the Secretary of State.	2 years.	
EL3150-08b	VOTER REGISTRATION REPORTS AND STATEMENTS	Pre-election registration statements submitted to the Secretary of State.	2 years.	
EL3150-08c	VOTER REGISTRATION REPORTS AND STATEMENTS	Reports submitted to the Secretary of State on new registrations, cancelled registrations, and change in registration information used to update state master voter registration file.	2 years.	
EL3150-08d	VOTER REGISTRATION REPORTS AND STATEMENTS	Notices from the Secretary of State of non-compliance with state master voter registration reporting requirements and subsequent notices of compliance.	2 years.	
EL3150-08e	VOTER REGISTRATION REPORTS AND STATEMENTS	Registration statements submitted to the State Comptroller of Public Accounts.	FE + 3 years.	
EL3150-09	PRECLEARANCE RECORDS	All preclearance submission documentation including, but not limited to, changes in election precincts, polling places, and voting procedures.	PERMANENT.	By law - Voting Rights Act of 1965, Section 5.
EL3150-10	SUSPENSE LIST	A list maintained by the voter registrar of each county that contains the names of (1) voters that failed to respond to the confirmation notice, (2) voters whose renewal certificate was returned to the registrar as undeliverable, and (3) those individuals that were excused or disqualified from jury service because they were not a resident of that county, state or the juror summons notice that the individual no longer resides in the county, or whose jury summons were returned to the district clerk as undeliverable.	US.	

Record Number	Record Title	Record Description	Retention Period	Remarks
EL3150-11	CHAPTER 19 FUND RECORDS	Records documenting funds received under Chapter 19, Election Code to finance voter registration.	3 state fiscal years after the fiscal year in which the funding lapses.	By regulation – 1 TAC 81.21(a).

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 512-463-5460 or 512-463-5436 Fax

Copies of this publication are available in alternative format upon request.

"Is this short-term health insurance plan right for me?"

*** You must read and sign this form. ***

<< Instructions to issuers:

- Required text is in quotation marks—remove quotation marks on your form.
- Except for contents of quotation marks, do not print the text inside two chevrons ('<<' and '>>') on the form you give to consumers.
- Content in brackets contain options. You must choose one of the options. Remove brackets on the form you give to consumers.
- Paragraph numbers and letters that are not within quotation marks and that are in bold font and enclosed in parenthesis like this **(X)** are for reference purposes only. Do not print the paragraph numbers and letters on the form you give to consumers.
- The mark X indicates the places you need to enter a number.
- The mark YYYY indicates the places you need to enter a year.
- You must use spacing of six points or more between bullets and paragraphs.
- You must bold text as indicated.
- Per statute, this form must be printed in 14-point font. >>

"Plan name:" <<Enter the plan marketing name>>

"Offered by:" <<Enter the name of issuer that is underwriting the coverage>>

(1) "This plan does not need to follow federal Affordable Care Act (ACA) rules. Unlike ACA plans, this short-term plan:

- May not cover all injuries or sicknesses, including any you have before applying.
- May not pay for some medical care you might need.
- Doesn't allow you to get federal help with premiums or out-of-pocket costs (tax credits and cost-sharing reductions).

Carefully read the information below so you know this plan's coverage limits and your rights under this plan."

(2) "How long will this plan cover me?"

<< Enter the number of days or months coverage will last under the initial term without any action by the consumer, assuming no fraud, misrepresentations, or failure to pay premiums. >>

"X ['days' or 'months']"

(3) "Can I renew or extend this plan?"

<< If the answer is 'No,' use: >>

"No."

<< Or, if the answer is 'Yes,' use: >>

"Yes. You have the right to renew the plan X times. But the total amount of time you can be covered by this plan is limited to X ['days,' 'months,' or 'years']. The amount of your premium payment might change after you renew this plan. But the amount can't go up because of a change in your health. A change in your health can't affect your benefits or your right to renew."

<< Also explain any other option to extend the plan. >>

(4) "When this plan ends, can I sign up for another insurance plan?"

- **If you want to sign up for another short-term health plan or another plan not covered by ACA laws:** You can sign up for another plan at any time. But a short-term health plan can deny you for health reasons. The amount of your premium payment might change.

- **If you want to sign up for a health plan covered by ACA laws:** You can sign up for another plan only during open enrollment or if you have a qualifying life event (like losing coverage from your job or having a baby). To find out if you have a qualifying life event, talk to your insurance agent or go to HealthCare.gov."
 - The next open enrollment dates for ACA plans are:" << To the extent possible, enter the dates of the next three open enrollment periods following the date the initial term of the policy expires. Enter the dates using the format shown below. >>
 - "YYYY: [Month] [day] to [Month] [day]
 - YYYY: [Month] [day] to [Month] [day]
 - YYYY: [Month] [day] to [Month] [day]
 - When you sign up for a plan during HealthCare.gov open enrollment dates, your insurance coverage will start January 1.
 - **The end of this plan is not a qualifying life event. You may have to wait until the next open enrollment period to sign up for an ACA plan."**

(5) "Am I covered for an injury, illness, or disease I had before I applied for this plan (a preexisting condition)?"

"Yes." << If the answer is 'Yes' and there are limitations or exclusions, explain them here. >>

<< If the answer is 'No'—preexisting conditions are excluded in full or in part, use: >>

"No.

- You must tell the truth when answering questions about your health.
- We can deny claims for any injury, illness, or disease you had before signing up for this plan (whether or not you tell us about your condition)."

(6) "What is the most (maximum) this plan will pay for services?"

<< Provide the policy term amount and, if applicable, provide the lifetime limit amount.

If there is only a policy term amount, use: >>

"\$X"

<< If there is a policy term amount and a lifetime limit amount, use: >>

"Policy term: \$X"

Lifetime limit: \$X"

(7) "What is the deductible (the amount I must pay for services before this plan starts paying)?"

<< If the plan is not a PPO, use: >>

"You must pay \$X (plus your premiums) before the plan will start paying for services."

<< Specify any services that are exempt from the deductible or that have different deductibles. If the deductible can reset more frequently than annually, this must be disclosed.

If the plan is a PPO, use: >>

"You must pay the following (plus your premiums) before the plan starts paying for services:

- \$X for in-network services.
- \$X for out-of-network services."

<< Specify any services that are exempt from the deductible or that have different deductibles. If the deductible can reset more frequently than annually, this must be disclosed. >>

(8) "Does this plan use a network of doctors / providers?"

<< Choose the applicable answer below. >>

"Yes, the plan is a PPO (preferred provider benefit plan) and has a network of doctors / providers. You can get care from in-network and out-of-network providers. Your costs are usually lower when you use in-network providers.

View the plan's list of in-network doctors / providers:" << Provide a website address to the plan directory or provide other information on how to locate providers. >>

<< or >>

"Yes, the plan is an EPO (exclusive provider benefit plan) and has a network of doctors / providers. Except for emergency care and some other situations, the plan covers care only from in-network providers.

View the plan's list of in-network doctors / providers:" << Provide a website address to the plan directory or provide other information on how to locate providers. >>"

<< or >>

"No. Your coverage is the same, no matter what doctor / provider you use. But the amounts the plan will pay might be less than providers charge for care. Doctors / providers can bill you directly for any amount the plan does not pay."

<< As applicable, include either: >>

"No providers have agreed in advance to give care at a set price with this plan."

<< or >>"The plan has a network of providers, but you are not limited by this list. If you choose an in-network provider, they will charge you a discounted price. View the plan's list of in-network doctors / providers:" << Provide a website address to the plan directory or other information on how to locate providers. >>

(9) "What type of care will this plan cover?"

"Review the chart below to know which benefits are covered by this plan. ACA plans cover all listed benefits with few limits, but this plan limits coverage for some types of care."

<< The chart below may be supplemented to include cost-sharing information for each benefit. If cost-sharing is not included, state: >>

"The chart below does not include your copay and coinsurance amounts. Ask your agent or the plan for this information."

"Type of care"	"Is it covered?"
<p><< This row is only for instructions. Remove this row on the copy you give to consumers. >></p>	<p><< For each benefit listed in the rows below, choose the applicable language: >></p> <p>"Yes, coverage is like ACA plans."</p> <p><< or >></p> <p>"Yes, but there are some limits."</p> <p><< or >></p> <p>"No"</p> <p><< Explain any applicable limitations (including benefit maximums), exceptions, or other important information about the nature of coverage. >></p>
<p>(a) "Emergency room visit"</p>	<p><< Use the same instructions given in the first row of this column. >></p>
<p>(b) "Urgent care"</p>	<p><< Use the same instructions given in the first row of this column. >></p>

"Type of care"	"Is it covered?"
(c) "Ambulance"	<< Use the same instructions given in the first row of this column. >>
(d) "Hospital stay – facility fee (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(e) "Hospital stay – doctor services (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(f) "Day surgery – facility fee (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(g) "Day surgery – doctor services (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(h) "Mental health services (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(i) "Mental health services (outpatient – no overnight stay)"	<< Use the same instructions given in the first row of this column. >>
(j) "Alcohol / drug / substance abuse services (inpatient – overnight stay)"	<< Use the same instructions given in the first row of this column. >>

"Type of care"	"Is it covered?"
<p>(k) "Alcohol / drug / substance abuse services (outpatient – no overnight stay)"</p>	<p><< Use the same instructions given in the first row of this column. >></p>
<p>(l) "Preventive care (includes regular checkups, and some screenings and vaccines)"</p>	<p><< Use the same instructions given in the first row of this column. >></p>
<p>(m) "Primary care (office visit to treat an injury or illness)"</p>	<p><< Use the same instructions given in the first row of this column. >></p>
<p>(n) "Specialist care office visit" (Doctors who treat one type of health issue. Examples: cancer, skin issues, allergies, heart issues, or kidney issues.)</p>	<p><< Use the same instructions given in the first row of this column. >></p>

"Type of care"	"Is it covered?"
<p>(o) "Drugs ordered by your doctor (outpatient prescription drugs)"</p>	<p><< Use the same instructions given in the first row of this column. And if the answer is 'yes' and coverage is limited to a formulary, include: >> "View the plan's list of covered drugs:" << Provide a website address to the list of covered drugs or provide information on how to get the list. And if answer is 'no,' but a discount plan is offered, that may be stated but it should not be represented as coverage. >></p>
<p>(p) "Services for a pregnant woman: prenatal office visits"</p>	<p><< Use the same instructions given in the first row of this column. >></p>
<p>(q) "Services for a pregnant woman: delivery – doctor services"</p>	<p><< Use the same instructions given in the first row of this column. >></p>
<p>(r) "Services for a pregnant woman: delivery – facility fee"</p>	<p><< Use the same instructions given in the first row of this column. >></p>

(10) "You must confirm you read and understand this form:"

"Did you read and understand the limited benefits offered by this plan before you applied or paid for coverage?"

- Yes, I read and understand the benefits and limits of this plan. I was not required to make a payment or apply for this policy before getting this disclosure form.

Don't sign this document if you don't understand it.
No firme este documento si no lo comprende."

"Type or sign your name:

Date:

"

(11) "Have a complaint or need help?

To check if an agent has a license or to file a complaint, go to the Texas Department of Insurance's website at www.tdi.texas.gov or call 1-800-252-3439."

(12) "Federal notice: This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

Figure: 30 TAC §335.1(154)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)	Energy Recovery/Fuel S.W. Def. (D)(ii)	Reclamation S.W. Def. (D)(iii) ²	Speculative Accumulation S.W. Def. (D)(iv)
Spent materials (listed hazardous and not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous) ¹	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous) ¹	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous) ¹	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal that is not excluded under subparagraph (A)	*	*	*	*

of this paragraph (hazardous)				
Scrap metal other than excluded scrap metal (see §335.17(a)(9) of this title) (nonhazardous) ¹	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

¹ These materials are governed by the provisions of §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) only.

² Except as provided in 40 CFR §261.2(c)(3) and §261.4(a)(17) for mineral processing secondary materials or as provided in 40 CFR §261.4(a)(23), (24), or (27) for hazardous secondary materials.

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.

Texas Animal Health Commission

Executive Director Order Declaring a Chronic Wasting Disease High Risk Area Containment Zone for Portions of Val Verde County

Under the provisions of Texas Agriculture Code, §161.061, if the Texas Animal Health Commission (Commission) determines that a disease listed in §161.041 exists in a place in this state, the Commission shall establish a quarantine on the affected place. Pursuant to §161.0615, the Commission may quarantine exotic livestock in all or any part of this state as a means of immediately restricting movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area. The Commission by rule may delegate its quarantine authority to the Executive Director of the Texas Animal Health Commission.

Under the provisions of 4 TAC §40.7, the Executive Director may issue an order to declare a Chronic Wasting Disease (CWD) high risk area or county based on sound epidemiological principles for disease detection, control, and eradication.

Chronic Wasting Disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, North American elk or wapiti (*Cervus Canadensis*), red deer (*Cervus elaphus*), Sika deer (*Cervus Nippon*), moose (*Alces alces*), and any associated subspecies and hybrids. CWD is known to be a communicable disease transmitted directly to susceptible species (through animal to animal contact) and indirectly (through environmental contamination).

Elk, red deer, sika deer, moose and their associated subspecies and hybrids (hereinafter referred to as non-native CWD susceptible species) are subject to regulation by the Commission as exotic livestock as provided by various provisions in Chapter 161.

The Executive Director finds that the recent detection of CWD infection in a free-ranging white-tailed deer (disease presence) in Val Verde County creates a high probability for susceptible species in portions of the county having, developing or being exposed to CWD.

The Executive Director further finds that the risk of disease exposure from the unnatural movement of non-native CWD susceptible species and carcass parts from these species located in portions of Val Verde County could lead to disease exposure across the state.

The Executive Director hereby DECLARES that portion of the state lying within the boundaries of a line beginning in Val Verde County at the International Bridge and proceeding northeast along Spur 239 to U.S. 90; thence north along U.S. 90 to the intersection of U.S. 277/377, thence north along U.S. 277/377 to the U.S. 277/377 bridge at Lake Amistad (29.496183°, -100.913355°), thence west along the southern shoreline of Lake Amistad to International boundary at Lake Amistad dam, thence south along the Rio Grande River to the International Bridge on Spur 239 to be a CWD High Risk Area Containment Zone (hereinafter referred to as Val Verde County Containment Zone or CZ).

The Executive Director hereby QUARANTINES the above referenced Val Verde County Containment Zone, and:

1. Prohibits a person from moving live non-native CWD susceptible species from the CZ.
2. Prohibits a person from releasing a non-native CWD susceptible species within the CZ unless the animal is released within a high fence premises and identified in accordance with 4 TAC §40.6(c)(7).
3. Requires a person that hunter harvests a non-native CWD susceptible species that is 16 months of age or older within the CZ to have the animal CWD tested by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Postmortem Sample Collector, or moved directly to a Texas Parks and Wildlife Check Station in Val Verde County for CWD testing within 48 hours of harvest. The test results shall be provided to the Commission within 30 days of receiving the test results.
4. Prohibits a person from moving a non-native CWD susceptible species carcass, or carcass parts, from the CZ unless:
 - a. CWD tested by a state or federal animal health official, an accredited veterinarian, or a Certified CWD Postmortem Sample Collector, or
 - b. Moved directly to a Texas Parks and Wildlife Check Station in Val Verde County for CWD testing within 48 hours of harvest, and
 - c. Meets the requirements of 4 TAC §40.6(e) related to carcass movement restrictions.

This order is issued pursuant to §§161.041, 161.061 and 161.0615 of the Texas Agriculture Code and 4 TAC §40.7 and is effective immediately, and authorizes publication of a Notice of the Chronic Wasting Disease High Risk Area Containment Zone for Portions of Val Verde County in the Del Rio News Herald.

This order shall remain in effect pending further epidemiological assessment by the Texas Animal Health Commission.

Signed this the 20th day of December, 2019.

Andy Schwartz, D.V.M.

Executive Director

Texas Animal Health Commission

TRD-201904966

Mary T. Luedeker

General Counsel

Texas Animal Health Commission

Filed: December 20, 2019

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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/30/19 - 01/05/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/30/19 - 01/05/20 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/20 - 01/31/20 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/20 - 01/31/20 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.

TRD-201904996

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 23, 2019

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 **February 11, 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 **February 11, 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: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-0809-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), Federal Operating Permit (FOP) Number O2114, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §116.115(c) and

§122.143(4), New Source Review Permit Numbers 37063 and N178, Special Conditions Number 1, FOP Number O2114, GTC and STC Number 18, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,188; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$8,075; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Chico; DOCKET NUMBER: 2019-0525-PWS-E; IDENTIFIER: RN101273076; LOCATION: Chico, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on June 10, 2015, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the three active groundwater sources in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the 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 the consumer notification has been distributed in a manner consistent with TCEQ requirements for the July 1, 2017 - December 31, 2017, and January 1, 2018 - June 30, 2018, 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; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2017 - June 30, 2017, monitoring period; PENALTY: \$1,380; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Meadow; DOCKET NUMBER: 2019-1195-MSW-E; IDENTIFIER: RN101570976; LOCATION: Meadow, Terry County; TYPE OF FACILITY: Type IAE Landfill; RULES VIOLATED: 30 TAC §330.165(a) and Municipal Solid Waste Permit Number 2293, and Site Operating Plan, Sections 4.18.2 Daily Cover and 4.18.3 Weekly Cover, by failing to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: COBY ALLEN DE LA GARZA; DOCKET NUMBER: 2019-1459-OSI-E; IDENTIFIER: RN110827896; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 S. Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Federal Bureau of Prisons; DOCKET NUMBER: 2019-1196-PST-E; IDENTIFIER: RN102909090; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: fuel dispensing facility; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(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; PENALTY: \$3,938; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Frio LaSalle Pipeline, LP; DOCKET NUMBER: 2019-1397-AIR-E; IDENTIFIER: RN106040488; LOCATION: Dille, Frio County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O3419/General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(42)(F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 94152, FOP Number O3419/GOP Number 514, Site-wide Requirements (b)(36), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,801; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: IEA CONSTRUCTORS LLC; DOCKET NUMBER: 2019-1732-WQ-E; IDENTIFIER: RN110865938; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: large construction site; RULES VIOLATED: 30 TAC §11.081 and §11.121, by failing to impound, divert, or use state water with a required permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79414-7833, (325) 698-9674.

(8) COMPANY: Jose O. Beltran and Maria A. Beltran dba 1017 Café; DOCKET NUMBER: 2019-1321-PWS-E; IDENTIFIER: RN102679461; LOCATION: San Isidro, Starr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(a)(3)(C) and (f), by failing to issue public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate for the first quarter of 2016; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of nitrate sampling to the ED for the first and second quarters of 2016; PENALTY: \$153; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 1804 West Jefferson, Avenue Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: MAS Katy Islamic Center, a subsidiary of Muslim American Society, Houston; DOCKET NUMBER: 2019-1116-PWS-E; IDENTIFIER: RN105728620; LOCATION: Katy, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director and receive an approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away from the wellhead at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and properly vented with a well casing vent that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so

as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the facility's well pump prior to any treatment; 30 TAC §290.41(c)(3)(O), by failing to protect the well with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house; 30 TAC §290.45(d)(2)(B)(ii) and THSC, §341.0315(c), by failing to provide a minimum ground storage capacity which is equal to 50% of the maximum daily demand (MDD); and 30 TAC §290.45(d)(2)(B)(iii) and THSC, §341.0315(c), by failing to provide at least one service pump with a capacity of three times the MDD; PENALTY: \$3,300; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Mo Pham dba 24th Discount Store; DOCKET NUMBER: 2018-1734-PST-E; IDENTIFIER: RN101725026; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 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; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: \$7,699; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Owens Corning Insulating Systems, LLC; DOCKET NUMBER: 2019-1021-AIR-E; IDENTIFIER: RN100223585; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: fiberglass manufacturing plant; RULES VIOLATED: 30 TAC §101.211(a) and §122.143(4), Federal Operating Permit (FOP) Number O1094, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.G, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a notification at least ten days, or as soon as practicable, prior to any scheduled maintenance, startup, or shutdown activity that is expected to cause an unauthorized emission that equals or exceeds the reportable quantity; and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 6093, Special Conditions Numbers 1 and 5, FOP Number O1094, GTC and STC Number 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$16,000; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: PERMIAN LODGING MIDLAND LLC; DOCKET NUMBER: 2019-1122-PWS-E; IDENTIFIER: RN107150658; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's three public drinking water wells into service; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or associated late fees for TCEQ Financial Administration Account Number 91650147 for Fiscal Year 2019; PENALTY: \$172; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(13) COMPANY: RK Trail LLC dba Lee Oak Grove Food Mart; DOCKET NUMBER: 2018-1459-PST-E; IDENTIFIER:

RN103145751; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: ROBERT DEAN MILLER; DOCKET NUMBER: 2019-1655-WR-E; IDENTIFIER: RN110844677; LOCATION: Pine Forest, Orange County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §11.081 and §11.121, by failing to impound, divert, or use state water with a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: RT 29 Development LLC; DOCKET NUMBER: 2019-1172-EAQ-E; IDENTIFIER: RN110790177; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer recharge zone; PENALTY: \$33,750; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(16) COMPANY: SANDERSON FARMS, INCORPORATED (PRODUCTION DIVISION); DOCKET NUMBER: 2019-1519-IWD-E; IDENTIFIER: RN101700839; LOCATION: Franklin, Robertson County; TYPE OF FACILITY: prepared feed mill; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0005138000, Effluent Limitations and Monitoring Requirements Number 1., by failing to comply with permitted effluent limitations; PENALTY: \$6,375; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512)-239-1001; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Scout Energy Management LLC; DOCKET NUMBER: 2019-0519-AIR-E; IDENTIFIER: RN100212414; LOCATION: Borger, Carson County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 Code of Federal Regulations §63.6603(a), Federal Operating Permit (FOP) Number O671/ General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(23), and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maintenance requirements for an existing four-stroke, rich-burn stationary reciprocating internal combustion engine greater than 500-horsepower; 30 TAC §101.201(b) and §122.143(4), FOP Number O671/GOP Number 514, Site-wide Requirements (b)(42)(F), and THSC, §382.085(b), by failing to create a final record for a non-reportable emissions event no later than two weeks after the end of the emissions event; 30 TAC §106.512(2)(C)(iii) and §122.143(4), Permit by Rule (PBR) Registration Number 154047, FOP Number O671/GOP Number 514, Site-wide Requirements (b)(9)(D)(xliv), and THSC, §382.085(b), by failing to conduct biennial performance testing; 30 TAC §§106.8(c)(2)(B) and (4), 106.512(2)(C)(i)(II), and 122.143(4), PBR Registration Number 154047, FOP Number O671/GOP Number 514, Site-wide Requirements (b)(9)(D)(xliii), and THSC, §382.085(b), by failing to maintain records containing sufficient information to demonstrate compliance with applicable PBR conditions; 30 TAC §122.143(4), FOP Number O671/GOP Number 514, Site-wide Requirements (b)(10)(A)(iv)(a), and THSC, §382.085(b), by failing to conduct quarterly visible emissions observations; 30 TAC §122.143(4) and §122.145(2)(B) and (C),

FOP Number O671/GOP Number 514, Site-wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.147(a), FOP Number O671/GOP Number 514, Site-wide Requirements (b)(1) and (2), and THSC, §382.085(b), by failing to install a monitoring system for the fuel consumption and nitrogen oxides emissions rate; PENALTY: \$75,499; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$30,200; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(18) COMPANY: Steve Lively dba Shady Shores RV Park and Melinda Lively dba Shady Shores RV Park; DOCKET NUMBER: 2019-1115-PWS-E; IDENTIFIER: RN101195667; LOCATION: Yantis, Wood County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(c)(1)(A)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a pressure tank capacity of ten gallons per unit with a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(f)(2) and (3), 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(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's three pressure 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 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(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service; and 30 TAC §290.121(a) and (b), by failing to develop and 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: \$1,850; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Triple C Concrete of Lubbock, Ltd; DOCKET NUMBER: 2019-0959-AIR-E; IDENTIFIER: RN104156286; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §§101.201(a)(1)(B), 116.115(b)(2)(E)(i), and 116.615(8), Standard Permit Registration Number 71025, Amendments to the Air Quality Standard Permit for Concrete Batch Plants, Special Conditions (SC) Number (3)(J)(i), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 71025, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §116.615(8), Standard Permit Registration Number 71025, Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Numbers (3)(J)(vi), (vii), and

(viii), and THSC, §382.085(b), by failing to maintain written records on-site for a rolling 24-month period; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 71025, Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Number (5)(H), and THSC, §382.085(b), by failing to conduct quarterly visible emissions observations; 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 71025, Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Number (9)(E)(ii), and THSC, §382.085(b), by failing to construct borders to a height of at least 12 feet; and 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 71025, Amendments to the Air Quality Standard Permit for Concrete Batch Plants, SC Number (9)(F), and THSC, §382.085(b), by failing to pave all entry and exit roads and main traffic routes associated with the operation of the plant with a cohesive hard surface that can be maintained and cleaned; PENALTY: \$14,120; ENFORCEMENT COORDINATOR: Carol McGrath, (210)403-4063; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(20) COMPANY: Undine Texas Environmental, LLC; DOCKET NUMBER: 2019-1252-MWD-E; IDENTIFIER: RN101609832; LOCATION: Angleton, Brazoria 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 WQ0012420001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$1,375; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201905009
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 30, 2019



Notice of Correction to Agreed Order Number 13

In the May 31, 2019, issue of the *Texas Register* (44 TexReg 2765), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 13, for JOLLYVILLE CAR WASH, INCORPORATED dba Arbor Car Wash & Lube Center. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "JOLLYVILLE CAR WASH dba Arbor Car Wash & Lube Center."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201905011
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 30, 2019



Notice of Correction to Agreed Order Number 20

In the July 5, 2019, issue of the *Texas Register* (44 TexReg 3449), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 20, for Woodridge 1 LP. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "WOODRIDGE HOMES I, LP."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201905010
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 30, 2019



Notice of District Petition

Notice issued December 20, 2019

TCEQ Internal Control No. D-10242019-061; Sixty-three landowners residing in Comal and Guadalupe Counties (Petitioners) filed a petition for creation of Lake Dunlap Water Control and Improvement District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Chapter 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) there are more than 50 persons holding title to the land in the proposed District as the Petitioners include 63 persons who own land to be included in the proposed District; (2) the proposed District will contain approximately 2,200 acres located within Comal and Guadalupe Counties, Texas; and (3) a portion of the proposed District is within the corporate boundaries of the City of New Braunfels, 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. In compliance with Texas Local Government Code Section 42.042 the City of New Braunfels consented to the creation of the proposed District. The petition further states that the proposed District will: (1) control, store, preserve, and distribute water and floodwater and the water of its rivers and streams for irrigation, power, and all other useful purposes; (2) reclaim, drain, conserve, and develop its forests, water, and hydroelectric power; (3) control, abate, and change any shortage or harmful excess of water; and (4) assure preservation and conservation of all natural resources of the state. More specifically, the District may finance, build, construct, improve, reconstruct, repair and maintain dams, structures, facilities and equipment in aid thereof, in order to store and preserve the waters within Lake Dunlap after the existing dam facilities catastrophically failed on May 14, 2019. According to the petition, a preliminary investigation has been made to determine the cost of the constructing and maintaining the proposed District's project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$28,000,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site 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 web site, type in the issued date 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 web site at www.tceq.texas.gov.

TRD-201905016

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 30, 2019



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 11, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 11, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: BuckSaver, LLC; DOCKET NUMBER: 2018-1241-PST-E; TCEQ ID NUMBER: RN101811347; LOCATION: 3327 North Twin City Highway, Nederland, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner that will detect a release at a frequency of at least once every 30 days; 30 TAC §334.74, by failing to investigate and confirm within 30 days after monitoring results from a release detection method indicated a release may have occurred. Specifically, Respondent did not investigate within 30 days after inventory control records for April and May 2018 indicated a release may have occurred; and 30 TAC §334.72, by failing to report to the agency within 24 hours after monitoring results from a release detection method indicated a release may have occurred. Specifically, Respondent did not report to TCEQ within 24 hours after inventory control records for April and May 2018 indicated a release may have occurred; PENALTY: \$18,775; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Noor Ali dba Brazos Bend Home & Ranch and TANK WORKS INC. dba Brazos Bend Home & Ranch; DOCKET NUMBER: 2018-0856-PWS-E; TCEQ ID NUMBER: RN101176592; LOCATION: 22930 Farm-to-Market Road 1462 near Needville, Fort Bend County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on July 31, 2017, 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 samples were collected; PENALTY: \$241; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: TEXAS NEW HORIZON, INC. dba Merito Food Mart; DOCKET NUMBER: 2018-1370-PST-E; TCEQ ID NUMBER: RN101881084; LOCATION: 3407 Genoa Red Bluff Road, Pasadena, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, the inventory control records for December 2017 and January 2018 for Tank Numbers two and three indicated a suspected release that was not reported; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery. Specifically, inventory control records for December 2017 and January 2018 for Tank Numbers two and three indicated a suspected release that was not investigated; PENALTY: \$18,775; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201905013

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 30, 2019



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 11, 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 each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 11, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Doris Faye Bullock; DOCKET NUMBER: 2018-1237-WOC-E; TCEQ ID NUMBER: RN103743779; LOCATION: intersection of Farm-to-Market Road 92 and Cole Road, near Silsbee, Hardin County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §37.003, Texas Health and Safety Code, §341.034(b), and 30 TAC §30.5(a) and §30.381(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$750; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: JIMBO'S ROAD HOUSE, LLC; DOCKET NUMBER: 2018-1112-PWS-E; TCEQ ID NUMBER: RN102317138; LOCATION: 35230 Hempstead Highway, Hockley, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.035(a), 30 TAC §290.39(e)(1) and (h)(1), and TCEQ Agreed Order (AO) Docket Number 2013-0879-PWS-E, Ordering Provision Number 2.e.ii., by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.46(n)(2) and TCEQ AO Docket Number 2013-0879-PWS-E, Ordering Provision Number 2.c.i., by failing to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.41(c)(3)(A) and TCEQ AO Docket Number 2013-0879-PWS-E, Ordering Provision Number 2.e.i., by failing to

submit well completion data for review and approval prior to placing the facility's public water well into service; PENALTY: \$180; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2019-0531-PWS-E; TCEQ ID NUMBER: RN102673712; LOCATION: Joyce Street and Shady Trail Circle near Athens, Henderson County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report by the tenth day of the month following the end of each quarter; 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director; 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification was distributed in a manner consistent with TCEQ requirements; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR was distributed to customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$1,736; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201905012

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 30, 2019



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 305

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 305, Consolidated Permits, §305.541, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 2771 from the 86th Texas Legislature, 2019, by amending §305.541 to adopt by reference the United States Environmental Protection Agency's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 Code of Federal Regulations Parts 435 and 437).

The commission will hold a public hearing on this proposal on February 4, 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) RE-

LAY-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 2019-118-305-OW. The comment period closes on February 11, 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 Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201904952

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 305 and 335

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 305, Consolidated Permits, §305.64 and the repeal of §305.149; and revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31, 335.43, 335.63, 335.69, 335.71, 335.76, 335.78, 335.91, 335.112, 335.152, 335.251, 335.261, 335.262, 335.331, 335.501, 335.504, 335.590, and 335.602, and new §335.281 under the requirements of Texas Health and Safety Code, §§361.017, 361.024, and 361.082; Texas Water Code, §5.103; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would revise state industrial solid waste and hazardous waste management regulations to maintain equivalency with Resource Conservation and Recovery Act revisions promulgated by the United States Environmental Protection Agency, and implement House Bill 1953, 86th Texas Legislature, 2019, Regular Session, relating to the conversion of plastics and other recyclable material through pyrolysis or gasification.

The commission will hold a public hearing on this proposal on February 6, 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 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

2019-085-335-WS. The comment period closes February 11, 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 Jarita Sepulvado, Industrial and Hazardous Waste Permits Section, (512) 239-4413.

TRD-201904987

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: December 20, 2019



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Lobby Activities Report due October 10, 2019

John Kroll, 1212 Guadalupe, Ste. 1003, Austin, Texas 78701

Kelly McBeth, P.O. Box 5100, Austin, Texas 78763

Kelly Parker, 107 Mirror Lake, San Antonio, Texas 78260

Karen Steakley, c/o Tesla, 11410 Century Oaks Terrance A03A, Austin, Texas 78758

Charles B. Wilkison, 400 W. 14th St., Ste. 100, Austin, Texas 78701

Deadline: Personal Financial Statement due July 1, 2019

Jarvis Johnson, 1051 Cottage Oak, Houston, Texas 77091

TRD-201904929

Anne Temple Peters

Executive Director

Texas Ethics Commission

Filed: December 19, 2019



General Land Office

Official Notice to Vessel Owner/Operator

(Pursuant to §40.254, Tex. Nat. Res. Code)

PRELIMINARY REPORT

Authority

This preliminary report and notice of violation was issued by Jimmy A. Martinez, Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on December 12, 2019.

Facts

Based on an investigation conducted by Texas General Land Office-Region 1 staff on December 12, 2019, the Commissioner of the General Land Office (GLO) has determined that an approximately 31' fiberglass hull recreational vessel identified as GLO Vessel Tracking Number 1-1867 is in a derelict and abandoned condition without the consent of the commissioner. The vessel is located at Latitude 29° 58' 05"N, 93° 51' 34"W, 9000 Yacht Club Road, Port Arthur Texas 77642. The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel has intrinsic value. The GLO has also determined that, because of the vessel's location and condition, the vessel poses a NAVIGATION HAZARD/THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA), that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or threatened unauthorized discharge of oil; a threat to the public health, safety, and welfare; a threat to the environment; or a navigational hazard. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Deputy Director has determined that Charles Pace is the person responsible for abandoning this vessel (GLO Tracking Number 1-1867) and recommends that the Commissioner order the abandoned vessel be disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the GLO. If the GLO removes and disposes of the vessel, the GLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator. For additional information, contact Michelle Castilleja at (512) 463-2613.

TRD-201904930

Mark A. Havens

Chief Clerk and Deputy Land Commissioner
General Land Office

Filed: December 19, 2019

Office of the Governor

Notice of Available Funding Opportunities

Office of the Governor, Public Safety Office (PSO)

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>).

--Border Prosecution Unit (BPU) -- The purpose of this announcement is to solicit applications for projects that prosecute border crimes.

--Local Border Security Program (LBSP) -- The purpose of this announcement is to solicit applications for projects that support Operation Border Star.

--Nonprofit Security Grant Program (NSGP) -- The purpose of this announcement is to solicit applications for projects that support physical security enhancements and other security activities to nonprofit organizations that are at high risk of a terrorist attack based on the nonprofit organization's ideology, beliefs or mission.

--Statewide Emergency Radio Infrastructure -- The purpose of this announcement is to solicit applications for projects that support state and regional efforts to improve or sustain interoperable emergency radio infrastructure.

--Texas Anti-Gang (TAG) Program -- The purpose of this announcement is to solicit applications for preselected projects that support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities.

--Texas Conversion to the National Incident-Based Reporting System (NIBRS) -- The purpose of this announcement is to solicit applications for projects that enable local law enforcement agencies to upgrade their technology infrastructure to support the submission of data to the Uniform Crime Reporting (UCR) National Incident-Based Reporting System.

TRD-201904943

Aimee Snoddy

PSO Executive Director
Office of the Governor

Filed: December 20, 2019

Texas Health and Human Services Commission

Correction of Error

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposed amendments to 26 TAC §748.313 in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8200).

Due to an error by the *Texas Register*, the figure for 26 TAC §748.313 was inadvertently left out of the print version and the online .pdf version of the December 27 issue. The figure was included in the online .html version as well as the online *Texas Register* database. The figure will be republished in its entirety.

Figure: 26 [40] TAC §748.313

Serious incident	Documentation
(1) Child death, substantial physical injury, or a suicide attempt reportable under §748.303(a)(1), (2), and (11) of this <u>division</u> [title] (relating to When must I report and document a serious incident?).	Any emergency behavior interventions implemented on the child within 48 hours prior to the serious incident.
(2) Any substantial physical injury reportable under §748.303(a)(2) of this <u>division</u> [title] that resulted from a short personal restraint.	Documentation of the short personal restraint, including the precipitating circumstances and specific behaviors that led to the emergency behavior intervention.
(3) <u>Unauthorized absence of a child</u> [Child absent without permission].	<p>(A) Any efforts made to locate the child;</p> <p>(B) The date and time you notified the parent(s) and the appropriate law enforcement agency and the names of the persons with whom you spoke regarding the child’s absence and subsequent location or return to the operation; [and]</p> <p>(C) If the parent cannot be located, dates and times of all efforts made to notify the parent regarding the child’s absence and subsequent location or return to the operation;</p> <p><u>(D) Whether the child has returned to the operation, and if so, the length of time the child was gone from the operation; and</u></p> <p><u>(E) If the child returns to the operation after 24 hours, an addendum to the report that documents the child’s return.</u></p>
(4) Any physical or sexual abuse committed by a child against another child reportable under §748.303 (a)(4) or (5) of this <u>division</u> [title].	The difference in size, age, and developmental level of the children involved in the physical or sexual abuse.

TRD-201905018



Notice of Public Hearing on Proposed Medicaid Payment Rates for the 2020 Annual Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 28, 2020, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for the 2020 Annual Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the 2020 Annual HCPCS Updates are proposed to be effective January 1, 2020, for the following services:

Blood - Type of Service (TOS) 0;

Physician Administered Drugs - TOS 1 (Medical Services);

Medical Services - TOS 1 (Medical Services);

Surgery and Assistant Surgery Services - TOS 2 (Surgery Services) and TOS 8 (Assistant Surgery);

Hospital Diagnostic Imaging - TOS 4 (Radiology);

Radiological Services - TOS 4 (Radiology), TOS I (Professional Component), and TOS T (Technical Component);

Clinical Diagnostic Laboratory Services - TOS 5 (Laboratory);

Nonclinical Laboratory Services - TOS 5, TOS I, and TOS T;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies - TOS 9 (Other Medical Items or Services), TOS J (DME Purchase - New), TOS L (DME Rental - Monthly);

Ambulatory Surgical Center and Hospital Ambulatory Surgical Center - TOS F (Ambulatory Surgical Center); and

Dental Services - TOS W (Texas Health Steps Dental/Orthodontia).

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8021, which addresses the reimbursement methodology for home health services;

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8097, which addresses the reimbursement methodology for physical, occupational, and speech therapy services;

§355.8121, which addresses the reimbursement for ambulatory surgical centers;

§355.8441, which addresses reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services

(known in Texas as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP); and

§355.8610, which addresses the reimbursement for clinical laboratory services.

Briefing Packets. Briefing packets describing the proposed payment rates for each topic will be available at <http://rad.hhs.texas.gov/rate-packets> on or after January 6, 2020. Packets will be posted separately by topic as soon as they are complete. Interested parties may obtain copies of the briefing packets prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packets will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201904989

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: December 20, 2019

Texas Department of Housing and Community Affairs

Release of the Notice of Funding Availability (NOFA) for the Texas Department of Housing and Community Affairs Fiscal Years 2020 - 2021 Texas Bootstrap Loan Program

I. Source of Funds.

The Texas Bootstrap Loan Program is funded through the Housing Trust Fund and established in Texas Government Code, §2306 Subchapter FF, Owner-Builder Loan Program, to provide very low-income households (Owner-Builders) an opportunity to purchase or refinance real property on which to build new housing or repair their existing homes through sweat-equity.

II. Notice of Funding Availability (NOFA) Summary.

The Texas Department of Housing and Community Affairs (the Department) announces \$6,430,382.52 from the Texas Housing Trust Fund (HTF) for Fiscal Years 2020 and 2021 of the Texas Bootstrap Loan Program. The funding will be available beginning Thursday, January 16, 2020, at 9:30 a.m. Austin local time through an online reservation system for eligible Nonprofit Owner-Builder Housing Providers (NOHPs) and Colonia Self-Help Centers (CSHCs) to reserve funds on behalf of eligible Owner-Builders.

The Texas Bootstrap Loan Program provides 0% interest loans of up to \$45,000 to Owner-Builders who provide at least 65% of the labor necessary to build or rehabilitate their housing by working with a state-

certified NOHP or CSHC. Owner-builder's household income may not exceed 60% of Area Median Family Income.

Eligible nonprofit organizations and CSHCs must first apply to become certified NOHPs in order to administer the Texas Bootstrap Loan Program. To be able to reserve Program funds on behalf of an Owner-Builder, the entities must execute a Reservation System Agreement with the Department.

III. Additional Information.

The Fiscal Years 2020-21 Texas Bootstrap Loan Program NOFA is on the Department's website at <http://www.tdhca.state.tx.us/oci/bootstrap.htm>. Please contact Lisa Johnson for more information regarding the NOFA at (512) 936-9988 or lisa.johnson@tdhca.state.tx.us.

TRD-201905014

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: December 30, 2019



North Central Texas Council of Governments

Request for Proposals for Southern Dallas County Regional Veloweb Alignment Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consulting firms to provide support for the review of the feasibility of various Regional Veloweb and bike-way segments in southern Dallas County linking the cities of Cedar Hill, DeSoto, Duncanville, and Lancaster. The Project study area is bounded on the west in the City of Cedar Hill from the existing trail along FM 1382 near the intersection of W. Pleasant Run Road to the east in Lancaster with the existing trail along E. Pleasant Run Road near the intersection of N. Lancaster-Hutchins Road.

Project deliverables will include five percent conceptual schematics, vertical alignments at critical locations, phasing of implementation, opinions of costs for each jurisdiction, environmental summary, and right-of-way and/or easements requirements of various trail segments, sidepaths, major highway crossings, major intersections, and railroad crossings.

Proposals must be received no later than 5:00 p.m. Central Time, on Friday, February 7, 2020, to Kevin Kokes, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, January 10, 2020.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201904945

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: December 20, 2019



Texas Racing Commission

Notice of Deadline to Request Recognition as Horsemen's Representative

Pursuant to Section 2023.051 of the Texas Racing Act (Texas Occupations Code §2023.051), and Title 16, Texas Administrative Code (TAC), §309.299, the Executive Director for the Texas Racing Commission provides notice that Monday, February 10, 2020, is the deadline to request Commission recognition as the horsemen's representative organization.

Section 2023.051 of the Texas Racing Act authorizes the Commission to recognize an organization to represent members of a segment of the racing industry, including owners, breeders, trainers, kennel operators, and other persons involved in the racing industry. In 16 TAC §309.299, the Commission has adopted criteria for being recognized as the organization to represent horse owners and trainers. This organization will be responsible for negotiating with each licensed racetrack regarding the racetrack's live racing programs, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, and the importing of simulcast signals during live race meetings.

To be eligible for recognition as the horsemen's representative organization, each officer and director of the organization during the two-year term of the recognition must be licensed by the Commission as an owner or trainer. The Commission will also review the experience and qualifications of the organization's directors, executive officers, and management personnel, the organization's benevolence programs, and the degree to which the organization's membership represents a fair and equitable cross-section of the horse owners and trainers participating at each of the racetracks in this state. The organization is subject to audit by the Texas Racing Commission.

To request recognition, an organization must file a written request on a form prescribed by the Executive Director. To obtain a copy of the form or for more information, interested persons should contact Devon Bijansky, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 833-6699, FAX (512) 833-6907.

TRD-201904922

Chuck Trout

Executive Director

Texas Racing Commission

Filed: December 18, 2019



Texas Department of Transportation

Aviation Division -- Request for Qualifications (RFQ) for Professional Engineering Services

Clover Acquisition Corporation, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: Clover Acquisition Corporation; TxDOT CSJ No.: 2012CLOVE.

The TxDOT Project Manager is Robert Johnson, P.E.

Scope: Provide engineering and design services to prepare a drainage study.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will

not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 23%.

To assist in your qualification statement preparation the criteria and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Pearland Regional Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way.

Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover letter with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than February 11, 2020, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

An instructional video on how to respond to a solicitation in eGrants is available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top-rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top-rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Robert Johnson, P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201904941

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: December 19, 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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