TEXAS REGISTER

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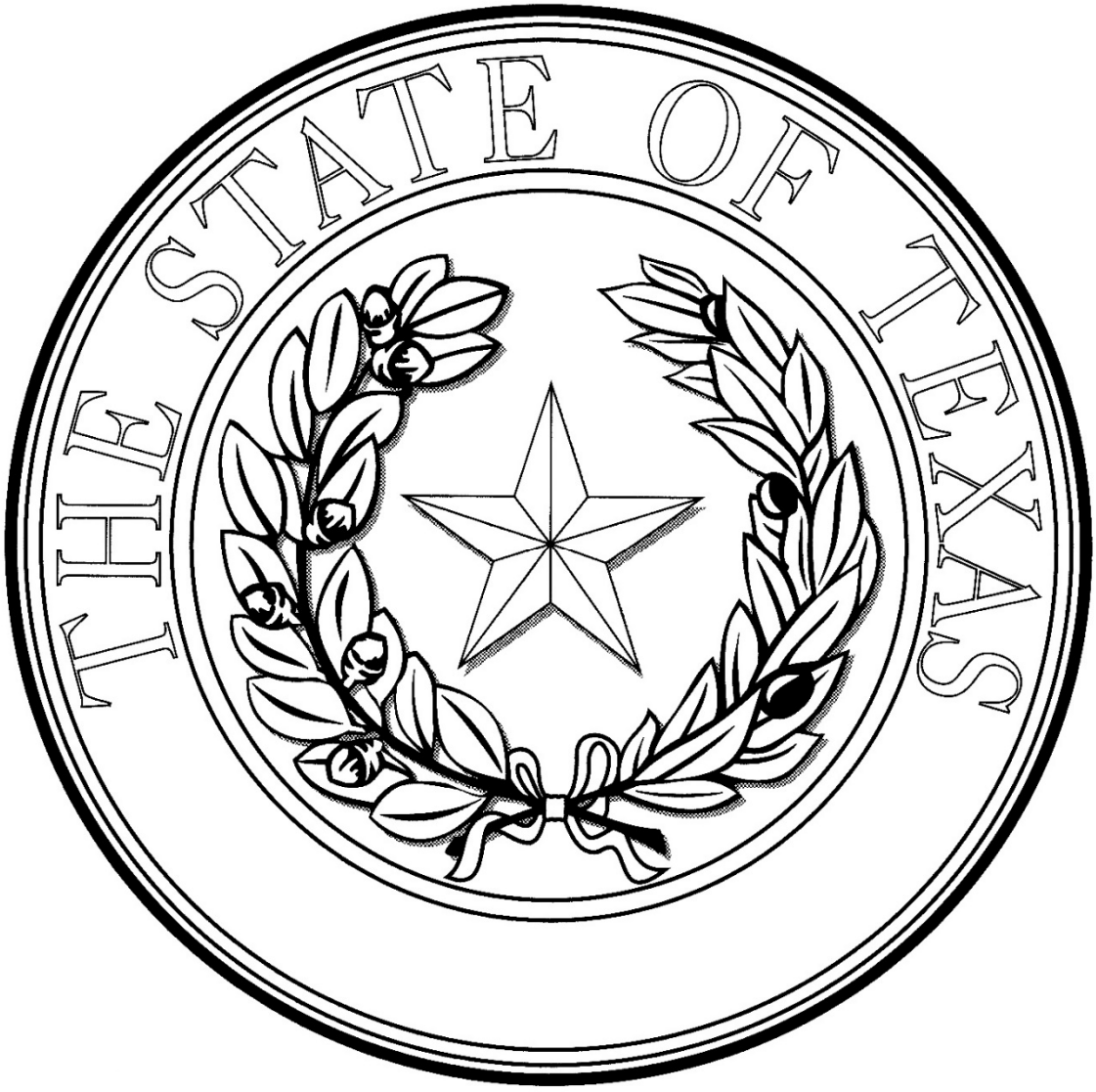

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In This Issue

ADOPTED RULES

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0332-KP

Requestor:

The Honorable R. David Holmes

Hill County Attorney

Post Office Box 253

Hillsboro, Texas 76645

Re: Whether subsection 2054.5191(a-1) of the Government Code requires a member of the board of directors of an appraisal district to complete certified cybersecurity training (RQ-0332-KP)

Briefs requested by March 12, 2020

RQ-0333-KP

Requestor:

The Honorable Eddie Lucio, Jr.

Chair, Senate Committee on Intergovernmental Relations

Post Office Box 12068

Austin, Texas 78711-2068

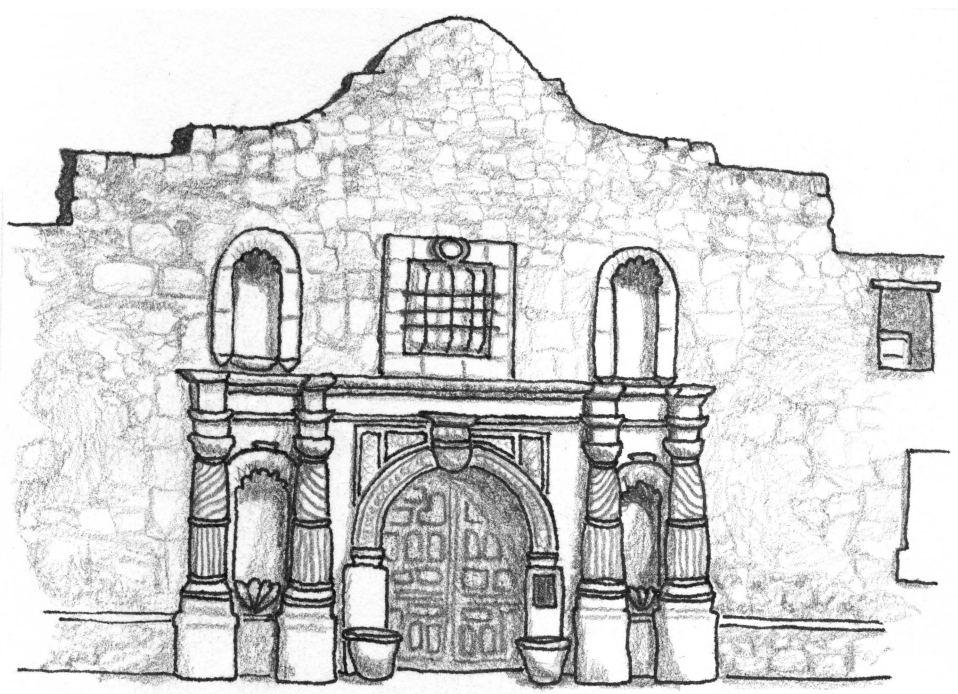
Re: Standards applicable to roads constructed by the Bastrop County Water Control and Improvement District No. 2 under section 11001.010 of the Special District and Local Laws Code (RQ-0333-KP)

Briefs requested by March 13, 2020

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

TRD-202000694
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 18, 2020

♦ ♦ ♦



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 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS REGULATED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. APPLICATION PROCEDURES

7 TAC §2.104, §2.106

The Finance Commission of Texas (commission) proposes amendments to §2.104 (relating to Application and Renewal Fees) and §2.106 (relating to Denial, Suspension, or Revocation Based on Criminal History), in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

In general, the purpose of the proposed amendments to 7 TAC Chapter 2 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 2 was published in the *Texas Register* on December 27, 2019, (44 TexReg 8343). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

The proposed amendments are intended to reduce costs for individual residential mortgage loan originators (RMLOs), to ensure consistency with current licensing procedures and processes, and to make technical corrections.

The proposed amendments to §2.104 would lower the RMLO application and annual renewal fees from $300 to $200, resulting in lower costs to individual RMLOs. These amendments are intended to reduce barriers for individuals to engage in the licensed occupation of being an RMLO regulated by the OCCC.

The proposed amendments to §2.106 relate to the OCCC's review of the criminal history of an RMLO applicant or licensee. The OCCC is authorized to review criminal history of RMLO applicants and licensees under Texas Occupations Code, Chapter 53, and Texas Finance Code, Chapter 180 (the Texas SAFE Act). Proposed amendments to subsection (c)(1) list the types of crimes that directly relate to the duties and responsibilities of being a regulated lender, as provided by Texas Occupations Code, §53.025(a). Other proposed amendments to §2.106 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between element of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §2.106 would implement these statutory changes from HB 1342. Other proposed amendments to §2.106 include technical corrections, clarifying changes, and updates to citations.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments. The amendments to §2.104 may reduce the revenue coming to the OCCC as a result of application and renewal fees from RMLOs. However, the OCCC intends to offset any reduction in revenue by adjusting discounts associated with annual license assessments for businesses holding regulated lender licenses.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be consistent with legislation recently passed by the legislature. In addition, each individual RMLO will pay $100 less at the time of application and with each annual renewal. This will reduce barriers for individuals to engage in the licensed occupation.

There is no anticipated cost to individual RMLOs who are required to comply with the rule amendments as proposed. The OCCC intends to offset any reduction in revenue by adjusting discounts associated with annual license assessments for businesses holding regulated lender licenses. The OCCC anticipates that any effect on these business licensees will be minimal, due to the relatively small number of individual RMLOs that the OCCC licenses.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and

the public on any economic impacts on small businesses, micro-businesses, and rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes will provide a decrease in fees paid to the agency for RMLOs, although the OCCC intends to offset any reduction in revenue by adjusting discounts associated with annual license assessments for businesses holding regulated lender licenses. The proposed rule changes do not create a new regulation. The proposal would limit existing regulations by reducing fees and amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history. The proposed rule changes do not expand or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Finance Code, §180.061, which authorizes the commission to adopt rules relating to criminal background checks for RMLOs, as well as rules relating to payment of RMLO application and renewal fees. In addition, Texas Finance Code, §180.004(b) authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180. The amendments to §2.106 are also proposed under Texas Occupations Code, §53.025, which requires each state licensing authority to issue guidelines relating to review of criminal history.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 53 and Texas Finance Code, Chapter 180.

§2.104. Application and Renewal Fees.

(a) Required submission to NMLS. To become an RMLO, an OCCC applicant must submit the required fees to NMLS. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable and nontransferable. However, upon review of individual circumstances, the OCCC may refund or transfer the state fees.

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at an amount not to exceed $200 [~~$300~~] and the RMLO annual renewal fee not to exceed $200 [~~$300~~] for applications filed with the OCCC. Annual renewal fees are due to NMLS by December 31 of each year. A third party operates NMLS and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee. The Finance Commission of Texas sets the RMLO reinstatement fee at $50 for applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each year.

§2.106. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant's character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation [~~from prosecution, law enforcement, and correctional authorities~~];

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensed residential mortgage loan originator, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner. Consequently, the following crimes [~~involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person~~] are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation: [~~.~~]

(A) theft;

(B) assault;

(C) any offense that involves the misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense; and

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; [~~and~~]

(D) the relationship of the crime to the ability or [~~,~~] capacity[~~, or fitness~~] required to perform the duties and discharge the responsibilities of a licensee; and [~~.~~]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) If a criminal conviction directly relates to the duties and responsibilities of the license [~~In determining whether a conviction for a crime renders an applicant or a licensee unfit to hold a license~~], the OCCC will consider the following factors in determining whether to deny a license application, or suspend or revoke a license, as specified in Texas Occupations Code, §53.023:

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

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; [~~and~~]

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) [~~(F)~~] evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation. [~~from one or more of the following:~~]

~~*[(i)* prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~*[(ii)* the sheriff or chief of police in the community where the person resides; and]~~

~~*[(iii)* other persons in contact with the convicted person.]~~

(d) Crimes related to financial responsibility, character, or general fitness. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). If the applicant or licensee has been convicted of an offense described by subsections (c)(1), (f)(1), or (f)(2) of this section, this reflects negatively on the applicant or licensee's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the applicant will operate lawfully and fairly. The OCCC will consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness. [~~Crimes that relate to financial responsibility, character, or general fitness include the following:~~]

~~[(1) fraud, misrepresentation, deception, or forgery;]~~

~~[(2) breach of trust or other fiduciary duty;]~~

~~[(3) dishonesty or theft;]~~

~~[(4) money laundering;]~~

~~[(5) assault;]~~

~~[(6) violation of a statute governing lending of this or another state;]~~

~~[(7) failure to file a required report with a governmental body, or filing a false report; or]~~

~~[(8) attempt, preparation, or conspiracy to commit one of the preceding crimes.]~~

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

(1) [~~(2)~~] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 [~~art. 42.12, §3g~~], or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3) [~~§53.021(a)(3)-(4)~~];

(2) [~~(3)~~] a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(3) [~~(4)~~] a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(4) [~~(5)~~] any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

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 February 14, 2020.

TRD-202000676
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-7660

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §§25.7, 25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, and 25.31 concerning contract forms and regulation of licensees.

Texas Government Code (Government Code) §2001.039 requires a state agency to review each of its rules every four years and either readopt, readopt with amendments, or repeal rules based upon the agency's review and determination as to whether the reasons for initially adopting the rules continue to exist. On June 21, 2019, Chapter 25 was readopted without amendments pursuant to Government Code §2001.039. At the time it was presented to the commission, staff stated that certain amendments which were necessary would be proposed at a later date.

On August 19, 2019, Chapter 25 was amended in response to a legislative directive that the commission by rule prescribe the term of a permit to sell prepaid funeral benefits. As a result of the amendments, permits are no longer renewed, but are effective until revoked by the department or surrendered by the permit holder. However, §§25.17, 25.19, 25.24, 25.25, and 25.31 still refer to the "renewal" of the permits. Thus, amendments to these sections are now proposed to eliminate all remaining references to the requirement that these permits be renewed.

Amendments to §§25.7, 25.10, 25.11, and 25.13 are proposed to update citations, correct typographical errors and eliminate outdated language.

Russell Reese, Assistant Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Reese has also determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is improved accuracy and clarity for persons required to comply with the rules.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

-- create or eliminate a government program;

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

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

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

-- create a new regulation;

-- expand, limit or repeal an existing regulation;

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

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

There will be no adverse economic effect on small businesses, micro-businesses or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on Monday, March 30, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.7

Amendments to Chapter 25, Subchapter A, §25.7 are proposed under Texas Finance Code (Finance Code), §154.051, which provides that the commission may adopt rules necessary or reasonable to supervise and regulate prepaid funeral services.

Finance Code, Chapter 154, Subchapters C and H are affected by the proposed amendments to Chapter 25, Subchapter A.

§25.7. Casket and Outer-Burial Containers.

(a) (No change.)

(b) Descriptions.

(1) (No change.)

(2) Description content.

(A) Caskets. The description of a casket under this section must, at a minimum, include the following specifications:

(i) (No change.)

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, [~~nongasketed,~~] if specified on the permit holder's price list; and

(iii) (No change.)

(B) Urns. The description of an urn under this section must, at a minimum, include the type of material predominately used

in its construction. Bronze urns must be described as sheet bronze or cast [~~caste~~] bronze, whichever is applicable.

(C) - (E) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000686
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 475-1301

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SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §§25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, 25.31

Amendments to Chapter 25, Subchapter B, §§25.10, 25.11, 25.13, 25.17, 25.19, 25.24, 25.25, and 25.31 are proposed under Texas Finance Code (Finance Code), §154.051, which provides that the commission may adopt rules necessary or reasonable to supervise and regulate prepaid funeral services.

Finance Code, Chapter 154, Subchapters C and H are affected by the proposed amendments to Chapter 25, Subchapter B.

§25.10. Recordkeeping Requirements for Insurance-Funded Contracts.

(a) Application and general requirements. This section applies to a permit holder that sells or maintains insurance-funded prepaid funeral benefit contracts (prepaid contracts). Unless the commissioner grants an exception as provided for in subsections (f)(3) and (g) of this section, a permit holder must maintain and produce for examination the records as specified in this section. The permit holder:

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

(3) must maintain the records either in hard-copy form, in an electronic database, or on another form of media [~~hard copy form or stored on microfiche or in an electronic database~~] from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient completion of the examination.

(b) - (i) (No change.)

§25.11. Recordkeeping Requirements for Trust-Funded Contracts.

(a) Application and general requirements. This section applies to a permit holder that sells or maintains trust-funded prepaid funeral benefit contracts (prepaid contracts). Unless the commissioner grants an exception as provided for in subsections (f)(2) and (g) of this section, a permit holder must maintain and produce for examination the records as specified in this section. The permit holder:

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

(3) must maintain the records either in hard-copy form, in an electronic database, or on another form of media [~~or stored on microfiche or in an electronic database~~] from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient completion of the examination.

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

(e) Other records. A permit holder subject to this section must maintain the following records regarding its prepaid funeral benefits operations in hard-copy form, in an electronic database, or on another form of media [~~or on microfiche or in an electronic database~~] from which they may be reasonably retrieved in hard-copy form:

(1) - (5) (No change.)

(f) - (i) (No change.)

§25.13. Annual Report Filing.

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

(c) Contents of filing. The Annual Report filing must be sworn to by an authorized agent or corporate officer of the permit holder before a notary and must provide:

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

(5) an explanation for any material variances between the ending balances in the recapitulation described in subsection (c)(3) [~~(b)(3)~~] of this section, and those in the in-force policy run or control ledger described in subsection (c)(4) [~~(b)(4)~~] of this section;

(6) - (7) (No change.)

§25.17. Guaranty Fund.

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

(c) Assessments. The department shall make and collect assessments from all sellers of prepaid funeral benefits pursuant to Finance Code Chapter 154, Subchapter H. Each seller shall remit the amount of its calculated assessment to the department each year with its [~~Renewal or~~] Annual Report filing.

(d) - (e) (No change.)

§25.19. Guaranty Fund Claims.

(a) Claims not eligible. In addition to claims excluded under Finance Code §154.359, the following claims are not eligible for payment from the Prepaid Funeral Guaranty Fund:

(1) - (3) (No change.)

(4) a claim under an insurance-funded prepaid funeral contract for a loss arising from or relating to the occurrence of one of the following events:

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

(C) the suspensionor revocation of [~~, revocation or refusal to renew~~] a permit under Chapter 154 of the Finance Code prior to September 1, 2009; or

(D) (No change.)

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

§25.24 What Fees Must I Pay for an Examination?

(a) (No change.)

(b) As a prepaid funeral benefits seller, what fees must I pay for department examinations?

(1) An annual assessment must be paid as an examination fee [~~and as a renewal fee~~] to the department to defray the cost of administering Chapter 154 of the Finance Code. The amount of your annual assessment is based on the number of outstanding contracts as reflected

on your most recent annual report filed with the department. You must pay the annual assessment specified in the following table:
Figure: 7 TAC §25.24(b)(1) (No change.)

(2) - (3) (No change.)

(c) - (d) (No change.)

§25.25. Conversion from Trust-Funded to Insurance-Funded Benefits.

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

(c) Contents of application. An application for conversion must respond to each paragraph of this subsection by number. Overlapping or duplicate responses may be cross-referenced for brevity.

(1) - (6) (No change.)

(7) Commitment of insurance company. If the post-conversion permit holder is not the insurance company and is unable to independently demonstrate that it has the organizational and financial resources to discharge its permit holder responsibilities, or otherwise intends to rely on the insurance company to provide such resources, the insurance company or its insurance holding company must commit to the department in writing to take all necessary steps to maintain the existence of the current or a successor post-conversion permit holder, cause such permit holder to maintain a permit, [~~annually renew its permit if renewal is required by Finance Code, §154.107,~~] and provide adequate resources to such post-conversion permit holder to enable it to maintain the financial condition and general fitness necessary to discharge the post-conversion permit holder's responsibilities under Finance Code, Chapter 154, and this chapter.

(8) Commitment of applicant. The applicant must commit to the department in writing to obtain and maintain [~~annually renew~~] a permit under Chapter 154 and assume the post-conversion permit holder's responsibilities with respect to each converted contract for any year in which any converted contract remains outstanding[~~and the post-conversion permit holder or a duly licensed successor fails to renew its permit as required with respect to the converted contracts, as evidenced by a final order revoking the permit~~]. The commitment must obligate the applicant to submit its completed application with all required fees not later than the 31st day after the date the department notifies the applicant in writing of the facts that require licensure under the commitment.

(9) - (18) (No change.)

(19) Application fee. In connection with an application submitted under this section, the applicant must submit the conversion application fee required by §25.23 of this title (relating to Application [~~and Renewal~~] Fees).

(20) (No change.)

(d) - (e) (No change.)

§25.31. Effect of Criminal Convictions on Permits.

(a) (No change.)

(b) Effect of criminal conviction on proposed or existing permit. The commissioner may deny an application for a permit, or cancelor suspend [~~, suspend, or refuse to renew~~] a permit if an official has been convicted of a crime which directly relates to the duties and responsibilities of a seller or servicer of prepaid funeral benefits contracts. Adverse action by the commissioner in response to a conviction of a crime specified in subsection (c) of this section is subject to mitigating circumstances and rights of the applicant or permit holder as specified in subsections (d) - (h) of this section.

(c) - (e) (No change.)

(f) Notification of adverse action. If a permit application is denied, or if a permit is canceledor suspended [~~, suspended, or not renewed~~] because of the criminal conviction of an official, the commissioner will so notify the applicant or permit holder in writing. The notification must include a statement of the reasons for the action and a description of the procedure for administrative or judicial review of the action.

(g) Administrative hearing. An applicant whose permit application is denied, or a permit holder whose permit is suspendedor canceled [~~, canceled, or not renewed~~] may request a hearing. A hearing on an order of suspensionor cancellation [~~, cancellation, or non-renewal~~] must be requested not later than the 15th day after the date the order is mailed. A hearing is subject to the provisions of the Administrative Procedure Act, Chapter 2001, Government Code and the provisions of Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).

(h) Judicial review. An applicant whose permit application has been denied, or a permit holder whose permit has been suspended or canceled [~~, canceled or not renewed~~] because of the criminal conviction of an official may appeal a final order as set forth in Government Code, Chapter 2001, Subchapter G.

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 February 14, 2020.

TRD-202000687
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 475-1301

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS
SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.201

The Finance Commission of Texas (commission) proposes amendments to §86.201 (relating to Documentary Fee) in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the proposed amendments to §86.201 is to implement changes resulting from the commission's review of 7 TAC Chapter 86 under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 86 was published in the *Texas Register* on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

The proposed amendments to §86.201 are intended to provide clarity and to update a statutory citation. Proposed new subsection (a) would add a purpose statement to specify which vehicles the rule applies to. A proposed amendment at subsection (b)(1) would amend a citation to the statutory definition of "all-terrain vehicle" in the Texas Transportation Code. This definition was moved to Texas Transportation Code, §551A.001(1) by HB 1548, which the Texas Legislature enacted during the 2019 legislative session.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rule amendments.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by persons required to comply with the rules, and will be consistent with legislation recently passed by the legislature.

There is no anticipated cost to persons who are required to comply with the amended rule as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agency. The proposed rule changes do not create a new regulation. The proposed rule changes do not limit, expand, or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

These amendments are proposed under Texas Finance Code, §345.251(e), which authorizes the commission to adopt rules to implement and enforce the statutory provision authorizing a documentary fee for certain retail installment transactions under Texas Finance Code, Chapter 345. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 345.

§86.201. Documentary Fee.

(a) Purpose. The purpose of this section is to specify the maximum documentary fee in a retail installment transaction for the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle, as provided by Texas Finance Code, §345.251.

(b) [~~(a)~~] Definitions.

(1) All-terrain vehicle--Has the meaning provided by Texas Transportation Code, §551A.001(1) [~~§502.001(1)~~].

(2) Boat--A vessel, as described by Texas Parks and Wildlife Code, §31.003(2).

(3) Boat motor--An outboard motor, as described by Texas Parks and Wildlife Code, §31.003(13).

(4) Covered land vehicle--A motorcycle, moped, all-terrain vehicle, boat trailer, or towable recreational vehicle.

(5) Covered watercraft--A boat or boat motor.

(6) Moped--Has the meaning provided by Texas Transportation Code, §541.201(8).

(7) Motorcycle--Has the meaning provided by Texas Transportation Code, §541.201(9).

(8) Retail installment contract--Has the meaning provided by Texas Finance Code, §345.001(6) and refers to one or more instruments entered into that evidence a secured or unsecured retail installment transaction for the sale of goods under Texas Finance Code, Chapter 345.

(9) Towable recreational vehicle--Has the meaning provided by Texas Finance Code, §348.001(10-a).

(c) [~~(b)~~] Contract for covered land vehicles only. For a retail installment contract for the purchase of one or more covered land vehicles, the reasonable maximum amount of the documentary fee is $125.

(d) [~~(c)~~] Contract for covered watercraft only. For a retail installment contract for the purchase of one or more covered watercraft, the reasonable maximum amount of the documentary fee is $125.

(e) [~~(d)~~] Contract for both covered land vehicles and covered watercraft. For a retail installment contract for the purchase of one or more covered land vehicles and one or more covered watercraft, the reasonable maximum amount of the documentary fee is $175.

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 February 14, 2020.

TRD-202000677
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-7660

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PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The Texas State Securities Board proposes an amendment to §109.7, concerning Secondary Trading Exemption under the Texas Securities Act, §5.O. The proposal would update the "manual exemption" contained in §5.O of the Act. Included in §5.O is the requirement that certain information about the issuer appear in either a recognized securities manual or on a form (133.5 or 133.6) filed with the Securities Commissioner. The definition of "recognized securities manual" in subsection (e) would be amended to remove S&P Capital IQ Standard Corporations Descriptions. S&P ceased publication of its manual as of May 2, 2016. At this time, all the time-sensitive information appearing in this publication has become outdated and would no longer serve to meet the requirements of §5.O.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be that registered dealers relying upon the securities exemption contained in §5.O for secondary market sales will have been apprised of the manuals recognized by the Board for purposes of the exemption. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-5.O.

§109.7. Secondary Trading Exemption under the Texas Securities Act, §5.O.

(a) - (d) (No change.)

(e) The term "recognized securities manual" as used in the Texas Securities Act, §5.O(9)(c), is limited to [~~the S&P Capital IQ Standard Corporation Descriptions,~~] Best Insurance Reports Life-Health, any Mergent's Manual, and the OTC Markets Group Inc. website (www.otcmarkets.com) for a company that is currently or has recently been quoted on the OTCQX or OTCQB markets. This designation encompasses both print and electronic data and includes periodic supplements to these publications. The information provided in the recognized securities manual must contain the information specified in subsection (d) of this section. All information provided must be current. The time for determining whether the entries are current is at the date of the particular sale, not the date the manual listings are published. If a listing is not continually updated, the exemption would not be available once the published balance sheet becomes more than 18 months old.

(f) (No change.)

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

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TRD-202000608
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.30

The Railroad Commission of Texas proposes amendments to §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ). The amendments are proposed to implement changes made by House Bill 2230 and House Bill 2771 from the 84th and 86th Texas Legislative Sessions, respectively. The proposed amendments also update the definition of underground source of drinking water.

The memorandum of understanding (MOU) between the TCEQ and the RRC was last amended in May 2012. Proposed amendments in subsection (a)(4) and subsection (g) update the applicable dates of MOU amendments. The proposed effective date of May 11, 2020, in subsection (g) may change depending on the date of RRC adoption of the proposed amendments.

House Bill 2230 (84th Legislature, 2015) enacted Texas Water Code, Section 27.026, to allow dual authorization of Class II and Class V injection wells for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC. House Bill 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of such brine or DWTR in a Class II well permitted by the RRC. Proposed new subsection (e)(4)(E) implements the dual authority granted by House Bill 2230.

House Bill 2771 (86th Legislature, 2019) amended Texas Water Code, Section 26.131, to transfer to TCEQ the RRC's responsibilities relating to regulation of discharges into surface water in the state, as defined in 30 TAC §307.3(70) (relating to Definitions and Abbreviations), of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. House Bill 2771 authorizes the transfer of responsibilities from the RRC to the TCEQ after TCEQ receives approval from the United States Environmental Protection Agency (EPA) to supplement or amend TCEQ's Texas Pollutant Discharge Elimination System (TPDES) program to include authority over these discharges. House Bill 2771 also establishes September 1, 2021, as the deadline for TCEQ to submit its request to the EPA to supplement or amend the TPDES program to include delegation of National Pollutant Discharge Elimination System (NPDES) permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent.

Amendments proposed to implement House Bill 2771 are found in subsection (b)(1)(B), (b)(2)(B), and (d)(12)(A). The definition of "produced water" proposed in subsection (b)(1)(B)(i) is based on TCEQ's proposed definition of that term as published in the January 10, 2020, issue of the *Texas Register* in proposed amendments to 30 TAC §305.541.

Amendments proposed in subsection (e)(1) correct references to the TCEQ Small Business and Environmental Assistance (SBEA) Division, which is now the TCEQ External Relations Division.

Finally, proposed amendments in §3.30(e)(7)(B)(ii) update the definition of "underground source of drinking water" to reference the definition in 40 Code of Federal Regulations §146.3.

The RRC notes that the proposed amendments to the MOU merely clarify the respective jurisdictions of the RRC and TCEQ and the amendments do not have a direct fiscal impact. However, the statutory changes that prompted the proposed amendments modify the authority of each agency, and the fiscal effect of these modifications is described in the following paragraphs.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years after TCEQ receives approval to supplement or amend its TPDES program and assumes responsibility for discharges of produced water, hydrostatic test water, and gas plant effluent and the amendments as proposed are in full effect, the RRC's Oil and Gas Regulation and Cleanup Fund would have revenue decreases of $225,000 from revenue currently collected by the RRC for processing applications that will be now be processed by the TCEQ under House Bill 2771. Also, transferring responsibilities from the RRC to TCEQ would result in a decrease of RRC salary and operating expenses of $188,178 each year. There will be no fiscal effect on local government.

Ms. Savage has determined that for the first five years the proposed amendments are in full effect, the primary public benefit will be a better understanding of the responsibilities of the RRC and the TCEQ, as well as compliance with applicable state law.

Ms. Savage has determined that for each year of the first five years that the amendments will be in full effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments. The proposed amendments update the MOU between the RRC and the TCEQ, and do not impose any new requirements on the regulated industry.

The RRC has determined that the proposed amendments to §3.30 will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the RRC has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

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

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

During the first five years that the rules would be in full effect, the proposed amendments would not: create or eliminate a government program; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. As noted above, the proposed amendments to the MOU merely clarify the respective jurisdictions of the RRC and TCEQ and the amendments do not have a direct fiscal impact. However, the statutory changes from House Bill 2771 create positions at the TCEQ and eliminate approximately 2.5 FTEs at the RRC. Also pursuant to House Bill 2771, application processing fees currently collected by the RRC will be collected by the TCEQ.

The proposed rulemaking 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. In accordance with the Coastal Coordination Act implementation rules, 31 TAC §505.22, the RRC reviewed the proposed rules and has determined that the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include 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 include 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 will 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 does not create or have a direct or significant adverse effect on any CNRAs.

Written comments on the consistency of this rulemaking with CMP goals may be submitted according the comment procedure addressed below.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The RRC will accept comments until 12:00 noon on Monday, March 30, 2020. The RRC finds that this comment period is reasonable because the proposal and an online comment form will be available on the RRC's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The RRC cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of RRC rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the RRC's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The RRC has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The RRC proposes the amendments to 16 TAC §3.30 under: (1) Texas Water Code §26.131, which transfers the responsibilities relating to regulation of discharges of produced water, hydrostatic test water and gas plant effluent into surface water in the state from the RRC to the TCEQ; (2) Texas Water Code Chapter 27, which authorizes the RRC to adopt and enforce rules relating to injection wells and, specifically, Texas Water Code §27.026, as amended by House Bill 2230, which requires the RRC and TCEQ by rule to amend the MOU to implement the statutory changes related to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals (DWTR); (3) Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all necessary rules for governing persons and their operations under the jurisdiction of the RRC; and (4) Texas Natural Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas.

Statutory authority: Water Code §§26.131 and 27.026, and Natural Resources Code §§81.052 and 85.201.

Cross reference to statute: Water Code Chapters 26 and 27; Natural Resources Code Chapters 81 and 85.

§3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) - (3) (No change.)

(4) The original MOU between the agencies adopted pursuant to House Bill 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, August 30, 2010, and again on May 1, 2012 [~~August 30, 2010~~], to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on May 1, 2012 [~~August 30, 2010~~], should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) (No change.)

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the purposes of TCEQ'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.

(ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

(iii) Discharge applications pending on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant information necessary to administratively and technically review and process the applications. TCEQ will review and process these pending applications in accordance with TPDES requirements.

(iv) [~~(ii)~~] Storm water. TCEQ has jurisdiction over storm water discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit.

These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities. The TCEQ regulates storm water discharges associated with certain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(v) [~~(iii)~~] State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(vi) [~~(iv)~~] Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) (No change.)

(2) Railroad Commission of Texas (RRC).

(A) (No change.)

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code §26.131(a), the TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) - (iii) (No change.)

(C) (No change.)

(c) (No change.)

(d) Jurisdiction over waste from specific activities.

(1) - (11) (No change.)

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's authority under this subsection.

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

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of [~~solid~~] wastes. Questions regarding source reduction and recycling may be directed to the TCEQ External Relations [~~Small Business and Environmental Assistance (SBEA)~~] Division, or to the RRC. The TCEQ may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ External Relations [~~SBEA~~] Division and the RRC will coordinate as necessary to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ External Relations [~~SBEA~~] Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ External Relations [~~SBEA~~] Division, share information with the TCEQ External Relations [~~SBEA~~] Division to maximize services to industrial operators, and advise industrial operators of the TCEQ External Relations [~~SBEA~~] Division services.

(2) - (3) (No change.)

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) - (D) (No change.)

(E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well authorized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals. A permitted Class II disposal well that has obtained a

Class V authorization from TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements or conditions to address the dual injection activity under Texas Water Code, §27.026.

(5) - (6) (No change.)

(7) Groundwater.

(A) (No change.)

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) (No change.)

(ii) For recommendations related to injection [~~in a non-producing zone~~], the RRC provides geologic interpretation of the base of the underground source of drinking water. The term "underground source of drinking water" [~~Underground source of drinking water~~] is defined in 40 Code of Federal Regulations §146.3 *(Federal Register,* Volume 46, June 24, 1980) [~~as an aquifer or its portions which supplies drinking water for human consumption; or in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer~~].

(8) - (9) (No change.)

(f) (No change.)

(g) Effective date. This Memorandum of Understanding, as of its May 11, 2020 [~~May 1, 2012~~], effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May 1, 2012 [~~August 30, 2010~~].

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 February 11, 2020.

TRD-202000573
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.227

The Public Utility Commission of Texas (commission) proposes the repeal of 16 Texas Administrative Code (TAC) §25.227, relating to Electric Utility Service for Public Retail Customers. The proposed repeal will implement amendments to the Public Utility Regulatory Act (PURA) enacted in House Bill (HB) 2263 during the 86th Legislative Session. HB 2263 removed provisions in PURA which authorized the commissioner of the General Land Office to make electricity sales directly to public retail customers.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule repeal, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule repeal is in effect, the following statements will apply:

(1) the proposed rule repeal will not create a government program and will not eliminate a government program, but will eliminate provisions in the commission's rules related to a program eliminated by HB 2263;

(2) implementation of the proposed rule repeal will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule repeal will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule repeal will not require an increase and will not require a decrease in fees paid to the agency;

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

(6) the proposed rule will repeal an existing regulation;

(7) the proposed rule repeal will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule repeal will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule repeal will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Paula Mueller, Rules Director, has determined that for the first five-year period the proposed rule repeal is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Paula Mueller, Rules Director, has also determined that for each year of the first five years the proposed rule repeal is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule repeal will be conforming the commission's rules to the requirements of PURA. There will be no probable economic cost to persons required to comply with the rule repeal under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed rule repeal is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on April 16, 2020, at 9:00 a.m. The request for a public hearing must be received by March 30, 2020. If no request for hearing is filed, Commisson staff will cancel the public hearing and make a filing in this project.

Public Comments

Comments on the proposed repeal may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, by March 30, 2020. Sixteen copies of comments to the proposed amendment are required to be filed by §22.71(c) of 16 Texas Administrative Code. All comments should refer to project number 50293.

Statutory Authority

This repeal is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (West 2016 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

§25.227 Electric Utility Service for Public Retail Customers.

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 February 14, 2020.

TRD-202000675
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF ENGLISH LANGUAGE LEARNERS IN STATE ASSESSMENTS

DIVISION 1. ASSESSMENTS OF ENGLISH LANGUAGE PROFICIENCY AND ACADEMIC CONTENT FOR ENGLISH LANGUAGE LEARNERS

19 TAC §101.1003

The Texas Education Agency (TEA) proposes an amendment to §101.1003, concerning English language proficiency assessments. The proposed amendment would modify the rule to provide clarification for the assessment of English learners (ELs) with significant cognitive disabilities.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.1003 clarifies the requirements for ELs to be tested for English language proficiency. Federal education policy now includes a requirement that all ELs, including those students with significant cognitive disabilities, be tested for English language proficiency. As a result, the TEA has developed the Texas English Language Proficiency Assessment System (TELPAS) Alternate.

The proposed amendment would add subsection (b)(1) to ensure that all ELs are tested for English language proficiency, including those students with significant cognitive disabilities.

The proposed amendment would also update references to ELs to align with current agency practice and adjust references to English language proficiency assessments to account for the inclusion of an alternative English language proficiency assessment for those with significant cognitive disabilities.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, 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 expand an existing regulation by providing a language proficiency assessment for ELs with significant cognitive disabilities.

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 limit or repeal 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: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that assessment procedures for ELs with significant cognitive disabilities are clear. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and 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 February 28, 2020, and ends March 30, 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 February 28, 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/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §39.027(e), which authorizes the commissioner of education to develop an assessment system to evaluate the English language proficiency of all students of limited English proficiency; Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(G), which requires states to provide an annual assessment of English language proficiency to all English learners; and 34 Code of Federal Regulations, §200.6(h), which requires states to provide for an alternate English language proficiency assessment for English learners with significant cognitive disabilities.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.027, the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(G), and 34 Code of Federal Regulations, §200.6(h).

§101.1003. English Language Proficiency Assessments.

(a) In Kindergarten-Grade 12, an English [~~language~~] learner (EL) [~~(ELL)~~] , as defined by the Texas Education Code (TEC), Chapter 29, Subchapter B, as a student of limited English proficiency, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the TEC, Chapter 39, Subchapter B, and federal requirements.

(b) In rare cases, the admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) may determine that it is not appropriate for an EL [~~ELL~~] who receives special education services to participate in the general [~~an~~] English language proficiency assessment required by subsection (a) of this section for reasons associated with the student's particular disability.

(1) Students with the most significant cognitive disabilities who cannot participate in the general English language proficiency assessment, even with allowable accommodations, shall participate in the alternate English language proficiency assessment to meet federal requirements.

(2) The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.

(c) In the case of an EL [~~ELL~~] who receives special education services, the ARD committee in conjunction with the LPAC shall determine and document the need for allowable testing accommodations in accordance with administrative procedures established by the Texas Education 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 February 14, 2020.

TRD-202000688
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.72, 535.73, 535.75

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.72, Approval of Non-elective Continuing Education Courses; §535.73, Approval of Elective Continuing Education Courses; and §535.75, Responsibilities and Operations of Continuing Education Providers.

The proposed amendments to §535.72 streamline the requirements of non-elective continuing education courses between classroom delivery and distance education delivery, so that no matter the delivery method, the requirements are the same. Specifically, the rule is amended to allow the examination at the end of a distance education course to be conducted within the course instruction time rather than after course completion and removes the requirement to grade the examination and receive a passing score of 70%. The proposed amendments to §535.73 adds a requirement for education providers to submit a timed course outline when applying for approval of an elective continuing education course. Adding this requirement removes the subjectivity and variability in how a course is described and explained by a provider in an application for course approval and allows providers to have a clear understanding in what is required for course approval. The proposed changes to §535.75 further streamline the requirements for continuing education providers by only requiring end of course examinations for non-elective continuing education courses, regardless of course delivery (classroom or distance).

The proposed amendments were recommended by the Education Standards Advisory Committee.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be simplified requirements for education providers.

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation;

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

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

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

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

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

§535.72. Approval of Non-elective Continuing Education Courses.

(a) - (e) (No change.)

(f) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this title (relating to Responsibilities and Operations of Providers of Qualifying Courses).

[~~(1)~~] [~~Classroom Delivery.~~] The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter (relating to Responsibilities and Operations of Continuing Education Providers).

[~~(2)~~] [~~Distance Education Delivery.~~]

[~~(A)~~] Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of methods [~~a method~~] to engage [~~distance education delivery~~] students in interactive discussions and [~~group~~] activities [~~, as well as additional material~~] to meet the course objectives and time requirements are required for approval.

[~~(B) The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter~~]

(g) Course examinations.

[~~(1)~~] A provider must administer a final examination promulgated by the Commission for non-elective CE courses. [~~as follows:~~]

[~~(A)~~] The [~~For classroom delivery, the~~] examination will be included in course [~~given as a part of class~~] instruction time. [~~with~~] Each [~~each~~] student will complete [~~answering~~] the examination [~~questions~~] independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

[~~(B) For distance education delivery, the examination will be given after completion of regular course work and must be:~~]

~~(i)~~ ~~proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student who registered for and took the course; or~~]

~~(ii)~~ ~~administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who registered for and took the course;~~]

~~(iii)~~ ~~graded with a pass rate of 70% in order for a student to receive credit for the course; and~~]

~~(iv)~~ ~~kept confidential.~~]

[~~(2) A provider may not give credit to a student who fails a final examination and subsequent final examination as provided for in subsection (h) of this section.~~]

[~~(h) Subsequent final course examination.~~]

[~~(1) If a student fails a final course examination, a provider may permit the student to take one subsequent final examination.~~]

[(2) A student shall complete the subsequent final examination no later than the 30th day after the date the original class concludes. The subsequent final examination must be different from the first examination.]

[(3) A student who fails the subsequent final course examination is required to retake the course and the final course examination.]

(h) [(i)] Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 (relating to Fees) or §535.210 of this title (relating to Fees).

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(i) [(j)] Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(j) [(k)] Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

§535.73. Approval of Elective Continuing Education Courses.

(a) (No change.)

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form; [and]

(B) pay the fee required by §535.101 (relating [related] to Fees) and §535.210 of this title (relating [related] to Fees); and[.]

(C) submit a timed course outline that includes:

(i) course topics;

(ii) assignments and activities, if applicable;

(iii) topic or unit quizzes, if applicable; and

(iv) the amount of time dedicated for each item listed in clauses (i) - (iii) of this subparagraph.

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) - (f) (No change.)

§535.75. Responsibilities and Operations of Continuing Education Providers.

(a) Except as provided by this section [Section], CE providers must comply with the responsibilities and operations requirements of §535.65 of this title (relating to Responsibilities and Operations of Providers of Qualifying Courses).

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a CE provider must use an instructor that:

(A) is currently qualified under §535.74 of this title (relating to Qualifications for Continuing Education Instructors); and

(B) (No change.)

(2) - (3) (No change.)

(4) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for 100% of a real estate or inspector elective CE courses provided that:

(A) The CE provider is:

(i) (No change.)

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter (relating to Approval of Continuing Education Providers); or

(iii) (No change.)

(B) (No change.)

(c) CE course examinations. Examinations are only required for non-elective CE courses [offered through distance education delivery] and must comply with the requirements in §535.72(g) [§535.72(h)(1)(B)] of this subchapter (relating to Approval of Non-elective Continuing Education Courses) and have a minimum of four questions per course credit hour.

(d) - (f) (No change.)

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

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000603
Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-3284

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SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.92

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.92, Continuing Education Requirements, in Chapter 535, General Provisions. The proposed amendments to §535.92 add three hours of required continuing education (CE) to real estate sales agents or broker license renewals, the subject matter of which must be real estate contracts. The proposed amendments additionally clarifies which license holders must take the broker responsibility course and updates the professional designations available through CE credit.

The proposed amendments are recommended by the Education Standards Advisory Committee.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing this section as proposed will be greater protection of consumers by the increased knowledge and aptitude of license holders.

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

--create or eliminate a government program;

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

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

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

--expand, limit or repeal an existing regulation;

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

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

For each year of the first five years the proposed amendments are in effect the amendments will, however, create a new regulation, in that sales agent and broker license holders will be required to take additional hours of continuing education to renew their license.

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

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

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

§535.92. Continuing Education Requirements.

(a) Required continuing education. 18 hours of continuing education are required for each renewal of a real estate sales agent or broker license and must include:

(1) a four hour Legal Update I: Laws, Rules and Forms course;

(2) a four hour Legal Update II: Agency, Ethics and Hot Topics course; [~~and~~]

(3) three hours on the subject of real estate contracts from one or more Commission approved courses; and

(4) [~~(3)~~] a six hour broker responsibility course, if the license holder:

(A) sponsors one or more sales agent at any time during the current license period;

(B) is a designated broker of a business entity that sponsors one or more sales agent at any time during the designated broker's current license period; or

(C) is a delegated supervisor under §535.2(e) of this title [~~of one or more license holders for a period of six months or more during the supervisor's current license period~~].

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

(f) Continuing education credit for courses required for a professional designation. A course taken by a license holder to obtain any of the following professional designations, or any other real estate related professional designation course deemed worthy by the Commission, may be approved on an individual basis for continuing education elective credit if the license holder files for credit for the course using Individual Elective Credit Request for Professional Designation Course and provides the Commission with a copy of the course completion certificate.

(1) ABR--Accredited Buyer Representative

(2) ACoM--Accredited Commercial Manager [~~CRE--Counselor in Real Estate~~]

(3) ARM--Accredited Residential Manager [~~CPM--Certified Property Manager~~]

(4) CCIM--Certified Commercial-Investment Member

(5) CPM--Certified Property Manager

(6) [~~(5)~~] CRB--Certified Residential Broker

(7) CRE--Counselor in Real Estate

(8) [~~(6)~~] CRS--Certified Residential Specialist

(9) [~~(7)~~] GRI--Graduate, Realtor Institute

(10) MPM--Master Property Manager

[~~(8) IREM--Institute of Real Estate Management~~]

(11) [~~(9)~~] SIOR--Society of Industrial and Office Realtors

(12) SRS--Seller Representative Specialist

(g) - (i) (No change.)

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

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000604
Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-3284

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210, §535.215

The Texas Real Estate Commission (TREC) proposes amendments to §535.210, Fees, and §535.215, Inactive Inspector Status in Subchapter R of Chapter 535, General Provisions. The proposed amendments to §535.210 eliminate the fee for inspectors for preparing certificates of active licensure or sponsorship. Eliminating the fee limits fund growth and provides more straightforward fee setting. The proposed amendments also removes the amount of the fee assessed for licensing examinations, which is established by the third-party examination vendor. The proposed amendments to §535.215 removes a provision that places a license on inactive status when an inspector applies to renew a license and pays the applicable fee, but who fails to complete the required continuing education as a condition for renewal. The provision is proposed for removal because it is no longer necessary. Previously it was needed to avoid a license holder who failed to complete required continuing education by the license expiration date from having to reapply for the license. Subsequently, a rule was added that allows license holders to pay a late renewal fee up to 180 days after license expiration. These proposed amendments are recommended by the Texas Real Estate Inspector Committee.

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

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of the changes is reduced costs, increased flexibility, improved clarity and a simplified licensing process without redundancies that existed previously for license holders and seekers.

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

--create or eliminate a government program;

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation;

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

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

For each year of the first five years the proposed amendments are in effect the amendments will, however, decrease fees paid to the agency.

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

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

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

§535.210. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of $60 for filing an original or reinstatement application for a license as an apprentice inspector;

(2) a fee of $100 for filing an original or reinstatement application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of $120 for filing an original or reinstatement application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of $30 for the timely renewal of the license of an apprentice inspector;

(5) a fee of $50 for the timely renewal of the license of a real estate inspector;

(6) a fee of $60 for the timely renewal of the license of a professional inspector;

(7) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(8) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(9) a fee [~~of $220~~] for taking a license examination consisting of a national portion and a state portion or retaking the national part of the license examination;

(10) a fee [~~of $60~~] for taking a license examination without a national portion or retaking the state part of the license examination;

(11) a fee of $50 to request an inactive professional inspector license be returned to active status;

[~~(12) a fee of $40 for preparing a certificate of active licensure or sponsorship;~~]

(12) [~~(13)~~] a fee of $50 for the filing of a fitness determination;

(13) [~~(14)~~] the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(14) [~~(15)~~] a fee of $400 for filing an application for accreditation of a qualifying inspector education program for a period of four years;

(15) [~~(16)~~] after initial approval of accreditation, a fee of $200 a year for operation of a qualifying inspector education program;

(16) [~~(17)~~] a fee of $50 plus the following fees per classroom hour approved by the Commission for each qualifying inspector education course for a period of four years:

(A) $5 for content and examination review;

(B) $5 for classroom delivery design and presentation review; and

(C) $10 for distance education delivery design and presentation review.

(17) [~~(18)~~] a fee of $400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(18) [~~(19)~~] a fee of $50 plus the following fees per classroom hour approved by the Commission for each continuing inspector education course for a period of two years:

(A) $2.50 for content and examination review;

(B) $2.50 for classroom delivery design and presentation review; and

(C) $5 for distance education delivery design and presentation review.

(19) [~~(20)~~] the fee required under paragraphs (16)(C) [~~(17)(C)~~] and (18)(C) [~~(19)(C)~~] of this subsection will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission.

(20) [~~(21)~~] a fee of $10 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination; and

(21) [~~(22)~~] the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application.

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

§535.215. Inactive Inspector Status.

(a) - (e) (No change.)

[~~(f) An inspector who applies to renew a license and pays the applicable fee, but who fails to complete any continuing education required by the Act as a condition of license renewal, shall be placed on inactive status by the Commission. The inspector must comply with the requirements of this section in order to return to active status.~~]

(f) [~~(g)~~] If a professional inspector terminates the sponsorship of an apprentice inspector or real estate inspector, the license of the apprentice inspector or real estate inspector immediately becomes inactive.

(g) [~~(h)~~] Inactive inspectors may not perform inspections. Performance of inspections while on inactive status is grounds for disciplinary action against the inactive license holder. A professional inspector who has been placed on inactive status may not return to practice or sponsor apprentices or inspectors until the professional inspector has met the requirements to be returned to active status under this section. It is a violation of this section and grounds for disciplinary action against a professional inspector for the professional inspector to permit an inactive apprentice inspector or an inactive real estate inspector to perform inspections in association with, or on behalf of, the professional inspector.

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 February 13, 2020.

TRD-202000605
Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-3284

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CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT
SUBCHAPTER O. ADMINISTRATIVE PENALTIES

22 TAC §539.140

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §539.140, Schedule of Administrative Penalties, in Chapter 539, Rules Relating to the Residential Service Company Act. The proposed amendments to §539.140 correct a reference within the rules.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and precision of rule references for members of the public and license holders.

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

--create or eliminate a government program;

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

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

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

--create a new regulation;

--expand, limit or repeal an existing regulation;

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

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

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

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.140. Schedule of Administrative Penalties.

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Act.

(b) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

(1) 22 TAC §539.91(b) [~~§539.137(b)~~];

(2) §1303.352(a)(1);

(3) §1303.352(a)(7);

(4) 22 TAC §539.64;

(5) 22 TAC §539.65;

(6) 22 TAC §539.66; and

(7) 22 TAC §539.82.

(c) An administrative penalty range of $500 - $5,000 per violation per day may be assessed for the following violations of the Texas Occupations and Administrative Codes:

(1) §1303.052

(2) §1303.101;

(3) §1303.151;

(4) §1303.153;

(5) §1303.352(a)(2) - (6);

(6) §1303.202(a);

(7) §1303.202(b);

(8) §1303.052; and

(9) 22 TAC §539.81.

(d) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (b) and (c) of this section if the residential service company has a history of previous violations.

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 February 13, 2020.

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Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 936-3284

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §7.117 and adopt new §7.117.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking would implement House Bill (HB) 2230 (84th Texas Legislature, 2015) which enacted Texas Water Code (TWC), §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

This rulemaking proposes to repeal §7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) as codified in the RRC Oil and Gas Division rules at 16 TAC §3.30. This rulemaking would also adopt the current text of the MOU under new §7.117 and amend the text of the current MOU (in 16 TAC §3.30) to implement HB 2230 and HB 2771.

Historically, the text of the MOU has been codified in the RRC Oil and Gas Division rules at 16 TAC §3.30 and the TCEQ has adopted the MOU by reference at §7.117. The TCEQ and the RRC have collaborated on proposed changes to the current MOU which are required by HB 2230 and HB 2771. The TCEQ understands that the RRC intends to conduct simultaneous rulemaking to amend the MOU at 16 TAC §3.30.

The RRC and the TCEQ agree that both agencies intend that the MOU at 16 TAC §3.30, once amended, and the MOU proposed at §7.117 would include the same substantive explanations of jurisdiction and requirements. The TCEQ acknowledges that there will be some minor stylistic differences.

The MOU is the result of collaboration between TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The

current MOU describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste. Several statutes cover persons and activities where respective jurisdiction of the RRC and the TCEQ may intersect. The current MOU is a statement of how the TCEQ and RRC implement the division of jurisdiction. The MOU delineates general agency jurisdictions regarding: solid waste; water quality; oil and gas waste; injection wells; hazardous waste; interagency activities, and radioactive material.

In addition to current language, as required by HB 2771, the amended MOU would describe the transfer of RRC's responsibilities to TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the United States Environmental Protection Agency (EPA) approval of TCEQ's request to amend or supplement its Texas Pollutant Discharge Elimination System (TPDES) program.

HB 2230 allows the TCEQ to authorize by individual permit, by general permit, or by rule, a Class V injection well for the disposal of nonhazardous brine or drinking water residuals in a Class II well permitted by the RRC. The proposed MOU would implement the dual authority granted by HB 2230. The proposed MOU would allow the TCEQ to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water treatment residuals (DWTR), under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

Section Discussion

§7.117, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality

The commission proposes to repeal the current language in §7.117 and simultaneously proposes to adopt new MOU language regarding the division of jurisdiction between the RRC and the TCEQ. The proposed rulemaking would incorporate the MOU as it currently exists in 16 TAC §3.30, with the amendments required by HB 2771 and HB 2230. The TCEQ is proposing to repeal and adopt new language to ensure TCEQ has completed all necessary requirements for the delegation package before requesting approval from the EPA for delegation of National Pollutant Discharge Elimination System (NPDES) permit authority for discharge of produced water, hydrostatic test water, and gas plant effluent.

Throughout this rule the reference to Small Business and Environmental Assistance (SBEA) has been replaced with TCEQ External Relations Division.

Proposed new subsection (a) would provide for the reason the MOU is needed. Additionally, subsection (a)(4) would amend the reference to effective dates of the MOU and subsection (a)(5) would amend the reference to the current MOU.

Proposed new subsection (b) would provide for the general agency jurisdictions. Additionally, proposed new subsection (b)(1)(B)(i) - (iii) and (2)(B)(i) would amend current language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the EPA approval of the TCEQ's request to amend or supplement its TPDES program.

Proposed new subsection (c) would provide the definition of hazardous waste and identify exemptions from classifications as hazardous waste for certain oil and gas waste.

Proposed new subsection (d) would describe the jurisdiction over waste from specific activities including: drilling, operation, and plugging of wells associated with the exploration, development or production of oil, gas, or geothermal resources; field treatment of produced fluids; storage of oil; underground hydrocarbon storage; underground natural gas storage; transportation of crude oil or natural gas; reclamation plants; refining of oil; natural gas or natural gas liquids procession plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants; manufacturing processes; commercial service company facilities and training facilities; and mobile offshore drilling units.

Additionally, proposed new subsection (d)(12)(A) and (C) would amend current language to reflect the transfer of the RRC's responsibilities to the TCEQ relating to regulation of discharges into surface water in the state of produced water resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the EPA approval of the TCEQ's request to amend or supplement its TPDES program.

Proposed new subsection (e) would describe interagency activities including: recycling and pollution prevention; treatment of waste under RRC jurisdiction at facilities authorized by the TCEQ under 30 TAC Chapter 334, Subchapter K; processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ; management of nonhazardous waste under TCEQ jurisdiction at facilities regulated by the RRC; drilling at landfills; coordination of actions and cooperative sharing of information; groundwater; emergency and spill response; and anthropogenic carbon dioxide storage.

Proposed new subsection (e)(1)(A) would amend current MOU language to delete the term "solid" as a modifier of the term "waste" to clarify that generators of solid waste and oil and gas waste are encouraged to recycle whenever possible to avoid disposal. Additionally, proposed new subsection (e)(4)(E) would amend current MOU language to reflect the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, by injection in a Class II injection well permitted by the RRC. Additionally, subsection (e)(7)(B)(ii) would add the citation to the Code of Federal Regulations for the definition of "underground source of drinking water."

Proposed new subsection (f) would describe the jurisdiction of TCEQ and RRC to regulate and license various types of radioactive materials.

Proposed new subsection (g) reflects the effective date of the MOU and would amend current language to reflect the new effective date.

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 after the proposed rulemaking is in effect, fiscal implications are anticipated for the agency and other state governmental entities as a result of ad-

ministration or enforcement of the proposed rule. After TCEQ receives approval to assume responsibility for discharges of produced water, hydrostatic test water, and gas plant effluent, the Legislative Budget Board estimated a revenue decrease to the RRC's Oil and Gas Regulation Account of $225,000 each year from the revenue that was collected through the processing of applications.

With the implementation of the program at TCEQ, oil and gas facilities that discharge produced water, hydrostatic test water, or gas plant effluent would become subject to TCEQ's state authority to issue discharge permits and would become subject to TCEQ's existing authority to collect application fees and annual water quality fees. TCEQ has identified 529 facilities would be subject to this program. The application fee for these state permits range from $1,250 for minor facilities to $2,050 for major facilities. However, for the purpose of this analysis, all are considered minor facilities. These permits last five years. The total estimated revenue in permit application fees is $661,250 on a five-year cycle.

The annual water quality fee for these permits varies depending on the discharge flow and the pollutant concentrations. For general permits, the fee is $100 per year. The average annual water quality fee for an industrial wastewater permit is $8,435. The agency estimates the total revenue from these facilities for the water quality fees would be $336,290 per year.

The General Appropriations Act (86th Texas Legislature, 2019) authorized funding to cover the costs upon delegation of the program as detailed in HB 2771. Article IX, Section 18.28, reduces the employees at the RRC by 2.5 full-time employees for a decrease in salary and operating expenses of $188,178 per year. The rider authorizes nine new employees at TCEQ to implement the program and conduct investigations to determine compliance with wastewater permits. The rider authorizes funding up to $431,406. The agency estimates the costs would continue annually in future years.

The agency does not expect any significant fiscal implications from the adoption of the proposed rulemaking to implement HB 2330.

No fiscal implications are anticipated for units of local government.

This rulemaking addresses necessary changes in order to implement HB 2230 and HB 2771.

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 a better understanding of the responsibilities of TCEQ and the RRC and compliance with state law. The proposed rulemaking is not anticipated to result in additional significant fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The 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 a government program but does transfer of duties as authorized by state law. This transfer will affect the future legislative appropriations to each agency; however, there will be a decrease in costs to the RRC and an increase to the TCEQ. As authorized in the General Appropriations Act, the proposed rulemaking does require the creation of new employee positions at TCEQ and reduces employee positions at RRC. The proposed rulemaking will increase fees paid to the TCEQ and reduce fees paid to RRC. The proposed rulemaking does not expand existing regulation, nor does it increase the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the 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.

The proposed MOU is the result of collaboration between TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015) which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

The proposed MOU would also describe the transfer of RRC's responsibilities to TCEQ relating to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, pro-

duction and development of oil, natural gas, or geothermal resources. This transfer of responsibilities would occur upon the EPA's approval of TCEQ's request to amend or supplement its TPDES program. The proposed MOU would also reflect the TCEQ's authority to authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous DWTR, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

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 implements state law. Also, the rulemaking does not exceed an express requirement of state law nor a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but under HB 2230, which enacted TWC, §27.026, and HB 2771, which amended TWC, §26.131. 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.

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. The proposed MOU is the result of collaboration between TCEQ and the RRC. The current MOU described in 16 TAC §3.30 has been in effect since 1982 and has been amended several times. The current MOU also describes the general jurisdiction of the TCEQ and the RRC regarding water quality and waste.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015) which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019) which amended TWC, §26.131.

The specific purpose of this rulemaking is to repeal §7.117 and adopt new §7.117 incorporating the current MOU codified in 16 TAC §3.30 and the changes required by HB 2771 and HB 2230. HB 2771 relates to regulation of discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the exploration, production and development of oil, natural gas, or geothermal resources. This transfer of responsibility will occur upon the EPA's approval of TCEQ's request to amend or supplement its TPDES program.

HB 2230 describes how the TCEQ may authorize by individual permit, general permit, or rule, a Class V injection well for the disposal of nonhazardous brine from a desalination operation, or nonhazardous drinking water residuals, under the jurisdiction of the TCEQ, into a Class II injection well permitted by the RRC.

This rulemaking will impose no burdens on private real property because the proposed rulemaking neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in the value of private real property as a result of this rulemaking.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 23, 2020, at 10:00 a.m., Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments on this rule may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. 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 2020-016-007-LS. The comment period closes on March 30, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Environmental Law Division, (512) 239-3417.

30 TAC §7.117

Statutory Authority

The repeal 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, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; 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; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131 which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter an MOU by rule to implement House Bill (HB) 2230; TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 by entering MOU by amending or entering new MOU by rule; Texas Health and Safety Code (THSC), §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter Memoranda of Understanding with state agencies by rule.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015), which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

§7.117. Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality.
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 February 13, 2020.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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30 TAC §7.117

Statutory Authority

The rule 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, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding; 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; TWC, §26.011, which establishes that the commission shall establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.121, which establishes the authority of the commission to issue discharge permits; TWC, §26.131, which establishes the duties of the Railroad Commission of Texas (RRC); TWC, §27.011, which establishes the commission's authority to issue permits for injection wells; TWC, §27.019, which establishes the commission's authority to adopt rules under TWC, Chapter 27; TWC, §27.026, which establishes the authority of the RRC and the TCEQ to enter an MOU by rule to implement House Bill (HB) 2230; TWC, §27.049, which establishes the authority of the RRC and the TCEQ to comply with TWC, Chapter 27 by entering MOU by amending or entering new MOU by rule; Texas Health and Safety Code (THSC), §401.001, which establishes the TCEQ's jurisdiction over regulation and licensing of radioactive materials and substances; and THSC, §401.069, which establishes the authority for the TCEQ to enter Memoranda of Understanding with state agencies by rule.

This rulemaking would implement HB 2230 (84th Texas Legislature, 2015), which enacted TWC, §27.026, and HB 2771 (86th Texas Legislature, 2019), which amended TWC, §26.131.

§7.117. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) Texas Health and Safety Code, §401.414, relating to Memoranda of Understanding, requires the Railroad Commission of Texas and the Texas Commission on Environmental Quality to adopt a memorandum of understanding (MOU) defining the agencies' respective duties under Texas Health and Safety Code, Chapter 401, relating to radioactive materials and other sources of radiation. Texas Health and Safety Code, §401.415, relating to oil and gas naturally occurring radioactive material (NORM) waste, provides that the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, and in so doing shall consult with the Texas Natural Resource Conservation Commission (now TCEQ) and the Department of Health (now Department of State Health Services) regarding protection of the public health and the environment.

(3) Texas Water Code, Chapters 26 and 27, provide that the Railroad Commission and TCEQ collaborate on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of carbon dioxide. Texas Water Code, §27.049, relating to Memorandum of Understanding, requires the RRC and TCEQ to adopt a new MOU or amend the existing MOU to reflect the agencies' respective duties under Texas Water Code, Chapter 27, Subchapter C-1 (relating to Geologic Storage and Associated Injection of Anthropogenic Carbon Dioxide).

(4) The original MOU between the agencies adopted pursuant to HB 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, August 30, 2010, and again on May 1, 2012, to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Con-

trol Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on May 1, 2012, should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) General agency jurisdictions.

(1) Texas Commission on Environmental Quality (TCEQ) (the successor agency to the Texas Natural Resource Conservation Commission).

(A) Solid waste. Under Texas Health and Safety Code, Chapter 361, §§361.001 - 361.754, the TCEQ has jurisdiction over solid waste. The TCEQ's jurisdiction encompasses hazardous and non-hazardous, industrial and municipal, solid wastes.

(B) Water quality.

(i) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TCEQ has jurisdiction over discharges into or adjacent to water in the state, except for discharges regulated by the RRC. Upon delegation from the United States Environmental Protection Agency to the TCEQ of authority to issue permits for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. For the purposes of TCEQ'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.

(ii) Discharge permits existing on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. RRC permits issued prior to TCEQ delegation of NPDES authority shall remain effective until revoked or expired. Amendment or renewal of such permits on or after the effective date of delegation shall be pursuant to TCEQ's TPDES authority. The TPDES permit will supersede and replace the RRC permit. For facilities that have both an RRC permit and an EPA permit, TCEQ will issue the TPDES permit upon amendment or renewal of the RRC or EPA permit, whichever occurs first.

(iii) Discharge applications pending on the effective date of EPA's delegation to TCEQ of NPDES permit authority for discharges of produced water, hydrostatic test water, and gas plant effluent. TCEQ shall assume authority for discharge applications pending at the time TCEQ receives delegation from EPA. The RRC will provide TCEQ the permit application and any other relevant information necessary to administratively and technically review and process the applications. TCEQ will review and process these pending applications in accordance with TPDES requirements.

(iv) Storm water. TCEQ has jurisdiction over stormwater discharges that are required to be permitted pursuant to Title 40 Code of Federal Regulations (CFR) Part 122.26, except for discharges regulated by the RRC. Discharge of storm water regulated by TCEQ may be authorized by an individual Texas Pollutant Discharge Elimination System (TPDES) permit or by a general TPDES permit. These storm water permits may also include authorizations for certain minor types of non-storm water discharges.

(I) Storm water associated with industrial activities. The TCEQ regulates storm water discharges associated with certain industrial activities under individual TPDES permits and under the TPDES Multi-Sector General Permit, except for discharges associated with industrial activities under the jurisdiction of the RRC.

(II) Storm water associated with construction activities. The TCEQ regulates storm water discharges associated with construction activities, except for discharges from construction activities under the jurisdiction of the RRC.

(III) Municipal storm water discharges. The TCEQ has jurisdiction over discharges from regulated municipal storm sewer systems (MS4s).

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the TCEQ, and a portion of a site is regulated by the EPA and RRC, storm water authorization must be obtained from the TCEQ for the portion(s) of the site regulated by the TCEQ, and from the EPA and the RRC, as applicable, for the RRC regulated portion(s) of the site. Discharge of storm water from a facility that stores both refined products intended for off-site use and crude oil in aboveground tanks is regulated by the TCEQ.

(v) State water quality certification. Under the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341), the TCEQ performs state water quality certifications for activities that require a federal license or permit and that may result in a discharge to waters of the United States, except for those activities regulated by the RRC.

(vi) Commercial brine extraction and evaporation. Under Texas Water Code, §26.132, the TCEQ has jurisdiction over evaporation pits operated for the commercial production of brine water, minerals, salts, or other substances that naturally occur in groundwater and that are not regulated by the RRC.

(C) Injection wells. Under the Texas Water Code, Chapter 27, the TCEQ has jurisdiction to regulate and authorize the drilling, construction, operation, and closure of injection wells unless the activity is subject to the jurisdiction of the RRC. Injection wells under TCEQ's jurisdiction are identified in §331.11 of this title (relating to Classification of Injection Wells) and include:

(i) Class I injection wells for the disposal of hazardous, radioactive, industrial or municipal waste that inject fluids below the lower-most formation which within 1/4 mile of the wellbore contains an underground source of drinking water;

(ii) Class III injection wells for the extraction of minerals including solution mining of sodium sulfate, sulfur, potash, phosphate, copper, uranium and the mining of sulfur by the Frasch process;

(iii) Class IV injection wells for the disposal of hazardous or radioactive waste which inject fluids into or above formations that contain an underground source of drinking water; and

(iv) Class V injection wells that are not under the jurisdiction of the RRC, such as aquifer remediation wells, aquifer recharge wells, aquifer storage wells, large capacity septic systems, storm water drainage wells, salt water intrusion barrier wells, and closed loop geothermal wells.

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and non-hazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, includ-

ing storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, 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, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 TAC §3.8(a)(30) (relating to Water Protection) and at §335.1 of this title (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) Hazardous wastes arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TCEQ to the RRC.

(B) Water quality.

(i) Discharges. Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, the RRC regulates discharges from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities, except that on delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ has sole authority to issue permits for those discharges. Discharges regulated by the RRC into or adjacent to water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TCEQ, the RRC has the responsibility for enforcing any violation of such standards resulting from activities regulated by the RRC. Texas Water Code, Chapter 26, does not require that discharges regulated by the RRC comply with regulations of the TCEQ that are not water quality standards. The TCEQ and the RRC may consult as necessary regarding application and interpretation of Texas Surface Water Quality Standards.

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under 16 TAC §3.8 (relating to Water Protection), the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) Municipal storm water discharges. Storm water discharges from facilities regulated by the RRC located within an MS4 are not regulated by the TCEQ. However, a municipality may regulate storm water discharges from RRC sites into their MS4.

(IV) Combined storm water. Except with regard to storage of oil, when a portion of a site is regulated by the RRC and the EPA, and a portion of a site is regulated by the TCEQ, storm water authorization must be obtained from the EPA and the RRC, as applicable, for the portion(s) of the site under RRC jurisdiction and from the TCEQ for the TCEQ regulated portion(s) of the site. Discharge of storm water from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(iii) State water quality certification. The RRC performs state water quality certifications, as authorized by the Clean Water Act (CWA) Section 401 (33 U.S.C. Section 1341) for activities that require a federal license or permit and that may result in any discharge to waters of the United States for those activities regulated by the RRC.

(C) Injection wells. The RRC has jurisdiction over the drilling, construction, operation, and closure of the following injection wells.

(i) Disposal wells. The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or

producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101.

(ii) Enhanced recovery wells. The RRC has jurisdiction over wells into which fluids are injected for enhanced recovery of oil or natural gas.

(iii) Brine mining. Under Texas Water Code, §27.036, the RRC has jurisdiction over brine mining and may issue permits for injection wells.

(iv) Geologic storage of carbon dioxide. Under Texas Water Code, §27.011 and §27.041, and subject to the review of the legislature based on the recommendations made in the preliminary report described by Section 10, Senate Bill No. 1387, Acts of the 81st Legislature, Regular Session (2009), the RRC has jurisdiction over geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir and over a well used for such injection purposes regardless of whether the well was initially completed for that purpose or was initially completed for another purpose and converted.

(v) Hydrocarbon storage. The RRC has jurisdiction over wells into which fluids are injected for storage of hydrocarbons that are liquid at standard temperature and pressure.

(vi) Geothermal energy. Under Texas Natural Resources Code, Chapter 141, the RRC has jurisdiction over injection wells for the exploration, development, and production of geothermal energy and associated resources.

(vii) In-situ tar sands. Under Texas Water Code, §27.035, the RRC has jurisdiction over the in situ recovery of tar sands and may issue permits for injection wells used for the in situ recovery of tar sands.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TCEQ is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, et seq.)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901, et seq.)."

(2) Federal regulations adopted under authority of the federal Solid Waste Disposal Act, as amended by RCRA, exempt from regulation as hazardous waste certain oil and gas wastes. Under 40 Code of Federal Regulations (CFR) §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy" are described as wastes that are exempt from federal hazardous waste regulations.

(3) A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 FedReg 25,446 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy, " 58 FedReg 15,284 (March 22, 1993). The exemption codified at 40 CFR §261.4(b)(5) and discussed in the Regulatory Determination has been, and may continue to be, clarified in subsequent guidance issued by the EPA.

(d) Jurisdiction over waste from specific activities.

(1) Drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources. Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, cathodic protection holes, core holes, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary or enhanced recovery of oil or gas, oil and gas waste disposal wells, and injection water source wells. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including waterborne human waste and waste from activities such as bathing and food preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC. Wastes from oil, gas, and geothermal exploration activities subject to regulation by the RRC when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized by the TCEQ under Chapter 330 of this title (relating to Municipal Solid Waste) are, as defined in §330.3(148) of this title (relating to Definitions), "special wastes."

(2) Field treatment of produced fluids. Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste that results from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, dehydration wastes, treating and cleaning chemicals, filters (including used oil filters), asbestos insulation, domestic sewage, and trash are subject to the jurisdiction of the RRC.

(3) Storage of oil.

(A) Tank bottoms and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TCEQ.

(B) Wastes generated from storage tanks that are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TCEQ.

(4) Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC,

provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201.

(5) Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173.

(6) Transportation of crude oil or natural gas.

(A) Jurisdiction over pipeline-related activities. The RRC has jurisdiction over matters related to pipeline safety for pipelines in Texas, as referenced in 16 TAC §8.1 (relating to General Applicability and Standards) pursuant to Chapter 121 of the Texas Utilities Code and Chapter 117 of the Texas Natural Resources Code. The RRC has jurisdiction over spill response and remediation of releases from pipelines transporting crude oil, natural gas, and condensate that originate from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC is responsible for water quality certification issues related to construction and operation of pipelines used to transport crude oil, natural gas, and condensate on an oil and gas lease, and from exploration and production facilities to the refinery gate. The RRC has jurisdiction over waste generated by construction and operation of pipelines transporting carbon dioxide.

(B) Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. The RRC also has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters.

(C) The TCEQ has jurisdiction over waste from transportation of refined products by pipeline.

(D) The TCEQ also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TCEQ.

(B) The RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. The applicable statute and regulations consist primarily of reporting requirements for accounting purposes.

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and American Petroleum Institute (API) separator sludges, is subject to the jurisdiction of the TCEQ. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §1.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. However, until delegation of authority under RCRA to the RRC, the TCEQ shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TCEQ. The term "manufacturing process" does not include the processing (including fractionation) of natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black.

(C) Biofuels. The TCEQ has jurisdiction over wastes associated with the manufacturing of biofuels and biodiesel. TCEQ Regulatory Guidance Document RG-462 contains additional information regarding biodiesel manufacturing in the state of Texas.

(11) Commercial service company facilities and training facilities.

(A) The TCEQ has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TCEQ has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TCEQ also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C) The term "commercial service company facility" does not include a station facility such as a warehouse, pipeyard, or equipment storage facility belonging to an oil and gas operator and used solely for the support of that operator's own activities associated with the exploration, development, or production activities.

(D) Notwithstanding subparagraphs (A) - (C) of this paragraph, the RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale, in volumes greater than the incidental volumes usually received at such facilities, that are managed at commercial service company facilities.

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to 16 TAC §3.8(f) (relating to Water Protection).

(12) Mobile offshore drilling units (MODUs). MODUs are vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources.

(A) The RRC and, where applicable, the EPA, the U.S. Coast Guard, or the Texas General Land Office (GLO), have jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources, except that upon delegation to the TCEQ of NPDES authority for discharges into surface water in the state of produced water, hydrostatic test water, and gas plant effluent resulting from the activities described in Texas Water Code, §26.131(a), the TCEQ shall assume RRC's authority under this subsection.

(B) The TCEQ and, where applicable, the EPA, the U.S. Coast Guard, or the GLO, have jurisdiction over discharges from an MODU when the unit is being serviced at a maintenance facility.

(C) Where applicable, the EPA, the U.S. Coast Guard, or the GLO has jurisdiction over discharges from an MODU during transportation from shore to exploration, development or production site, transportation between sites, and transportation to a maintenance facility.

(e) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TCEQ and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of wastes. Questions regarding source reduction and recycling may be directed to the TCEQ External Relations Division, or to the RRC. The TCEQ may require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TCEQ; similarly, the RRC may explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TCEQ at a facility regulated by the RRC.

(B) The TCEQ External Relations Division and the RRC will coordinate as necessary to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TCEQ External Relations Division will make the proper TCEQ personnel aware of the services offered by the RRC, share information with the RRC to maximize services to oil and gas operators, and advise oil and gas operators of RRC services. The RRC will make the proper RRC personnel aware of the services offered by the TCEQ External Relations Division, share information with the TCEQ External Relations Division to maximize services to industrial operators, and advise industrial operators of the TCEQ External Relations Division services.

(2) Treatment of wastes under RRC jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil).

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for treatment at TCEQ regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in §334.481 of this title (relating to Definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TCEQ when sending their petroleum contaminated soils to soil treatment facilities under TCEQ jurisdiction. Those requirements are in §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), except subsection (c) which is not applicable, and §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators). RRC generators with questions on these requirements should contact the TCEQ.

(B) Generators under RRC jurisdiction should also be aware that TCEQ regulated soil treatment facilities are required by §334.499 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil). The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste, including treated waste, subject to the jurisdiction of the RRC and managed at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title will remain subject to the jurisdiction of the RRC. Such materials will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities authorized by the TCEQ under Chapter 334, Subchapter K of this title.

(3) Processing, treatment, and disposal of wastes under RRC jurisdiction at facilities authorized by the TCEQ.

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TCEQ once alternatives for recycling

and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at facilities regulated by the TCEQ. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TCEQ is required to manage "special waste" under the jurisdiction of the RRC at a facility regulated by the TCEQ. The TCEQ's concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TCEQ may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics. Management and disposal of waste under the jurisdiction of the RRC is subject to TCEQ's rules governing both special waste and industrial waste.

(C) If the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization, individual written concurrences from the TCEQ shall be required to manage wastes under the jurisdiction of the RRC at TCEQ regulated facilities. Recommendations for the management of special wastes associated with the exploration, development, or production of oil, gas, or geothermal resources are found in TCEQ Regulatory Guidance document RG-3. (This is required only if the TCEQ regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization provided by the TCEQ.) To obtain an individual concurrence, the waste generator must provide to the TCEQ sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in Chapter 335, Subchapter R of this title (relating to Waste Classification)). In obtaining TCEQ approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TCEQ for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TCEQ or the RRC. Waste sludge subject to the jurisdiction of the RRC may not be applied to the land at a facility permitted by the TCEQ for the beneficial use of sewage sludge or water treatment sludge.

(E) TCEQ waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TCEQ. If a receiving facility requires a TCEQ waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i) the sequence number "RRCT";

(ii) the appropriate form code, as specified in Chapter 335, Subchapter R, §335.521, Appendix 3 of this title (relating to Appendices); and

(iii) the waste classification code "H" if the waste is a hazardous oil and gas waste, or "R" if the waste is a nonhazardous oil and gas waste.

(F) If a facility requests or requires a TCEQ waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(G) Wastes that are under the jurisdiction of the RRC need not be reported to the TCEQ.

(4) Management of nonhazardous wastes under TCEQ jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TCEQ may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) To obtain an individual authorization from the RRC, the waste generator must provide the following information, in writing, to the RRC: the identity of the proposed waste management facility, the quantity of waste involved, a hazardous waste determination that addresses the process generating the waste and the physical and chemical nature of the waste, and any other information that the RRC may require. As appropriate, the RRC shall reevaluate any authorization issued pursuant to this paragraph.

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TCEQ are authorized without further TCEQ approval to be disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TCEQ; and sludges from washout pits at commercial service company facilities.

(D) Under Texas Water Code, §27.0511(g), a TCEQ permit is required for injection of industrial or municipal waste as an injection fluid for enhanced recovery purposes. However, under Texas Water Code, §27.0511(h), the RRC may authorize a person to use nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without obtaining a permit from the TCEQ. The use or disposal of radioactive material under this subparagraph is subject to the applicable requirements of Texas Health and Safety Code, Chapter 401.

(E) Under Texas Water Code, §27.026, by individual permit, general permit, or rule, the TCEQ may designate a Class II disposal well that has an RRC permit as a Class V disposal well autho-

rized to dispose by injection nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals under the jurisdiction of the TCEQ. The operator of a permitted Class II disposal well seeking a Class V authorization must apply to TCEQ and obtain a Class V authorization prior to disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals. A permitted Class II disposal well that has obtained a Class V authorization from TCEQ under Texas Water Code, §27.026, remains subject to the regulatory requirements of both the RRC and the TCEQ. Nonhazardous brine from a desalination operation and nonhazardous drinking water treatment residuals to be disposed by injection in a permitted Class II disposal well authorized by TCEQ as a Class V injection well remain subject to the requirements of the Texas Health and Safety Code, the Texas Water Code, and the TCEQ's rules. The RRC and the TCEQ may impose additional requirements or conditions to address the dual injection activity under Texas Water Code, §27.026.

(5) Drilling in landfills. The TCEQ will notify the Oil and Gas Division of the RRC and the landfill owner at the time a drilling application is submitted if an operator proposes to drill a well through a landfill regulated by the TCEQ. The RRC and the TCEQ will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations. The TCEQ requires prior written approval before drilling of any test borings through previously deposited municipal solid waste under §330.15 of this title (relating to General Prohibitions), and before borings or other penetration of the final cover of a closed municipal solid waste landfill under §330.955 of this title (relating to Miscellaneous). The installation of landfill gas recovery wells for the recovery and beneficial reuse of landfill gas is under the jurisdiction of the TCEQ in accordance with Chapter 330, Subchapter I of this title (relating to Landfill Gas Management). Modification of an active or a closed solid waste management unit, corrective action management unit, hazardous waste landfill cell, or industrial waste landfill cell by drilling or penetrating into or through deposited waste may require prior written approval from TCEQ. Such approval may require a new authorization from TCEQ or modification or amendment of an existing TCEQ authorization.

(6) Coordination of actions and cooperative sharing of information.

(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TCEQ at a facility permitted by the RRC, the TCEQ is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TCEQ, the RRC is responsible for enforcement actions against the generator or transporter, and the TCEQ is responsible for enforcement actions against the disposal facility.

(B) The TCEQ and the RRC agree to cooperate with one another by sharing information. Employees of either agency who receive a complaint or discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, will notify the other agency. In addition, to facilitate enforcement actions, each agency will share information in its possession with the other agency if requested by the other agency to do so.

(C) The TCEQ and the RRC agree to work together at allocating respective responsibilities. To the extent that jurisdiction is indeterminate or has yet to be determined, the TCEQ and the RRC agree to share information and take appropriate investigative steps to assess jurisdiction.

(D) For items not covered by statute or rule, the TCEQ and the RRC will collaborate to determine respective responsibilities for each issue, project, or project type.

(E) The staff of the RRC and the TCEQ shall coordinate as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art.

(7) Groundwater.

(A) Notice of groundwater contamination. Under Texas Water Code, §26.408, effective September 1, 2003, the RRC must submit a written notice to the TCEQ of any documented cases of groundwater contamination that may affect a drinking water well.

(B) Groundwater protection letters. The RRC provides letters of recommendation concerning groundwater protection.

(i) For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the RRC provides geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the RRC. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water.

(ii) For recommendations related to injection, the RRC provides geologic interpretation of the base of the underground source of drinking water. The term "underground source of drinking water" is defined in 40 Code of Federal Regulations §146.3 (*Federal Register,* Volume 46, June 24, 1980).

(8) Emergency and spill response.

(A) The TCEQ and the RRC are members of the state's Emergency Management Council. The TCEQ is the state's primary agency for emergency support during response to hazardous materials and oil spill incidents. The TCEQ is responsible for state-level coordination of assets and services, and will identify and coordinate staffing requirements appropriate to the incident to include investigative assignments for the primary and support agencies.

(B) Contaminated soil and other wastes that result from a spill must be managed in accordance with the governing statutes and regulations adopted by the agency responsible for the activity that resulted in the spill. Coordination of issues of spill notification, prevention, and response shall be addressed in the State of Texas Oil and Hazardous Substance Spill Contingency Plan and may be addressed further in a separate Memorandum of Understanding among these agencies and other appropriate state agencies.

(C) The agency (TCEQ or RRC) that has jurisdiction over the activity that resulted in the spill incident will be responsible for measures necessary to monitor, document, and remediate the incident.

(i) The TCEQ has jurisdiction over certain inland oil spills, all hazardous-substance spills, and spills of other substances that may cause pollution.

(ii) The RRC has jurisdiction over spills or discharges from activities associated with the exploration, development, or production of crude oil, gas, and geothermal resources, and discharges from brine mining or surface mining.

(D) If TCEQ or RRC field personnel receive spill notifications or reports documenting improperly managed waste or contaminated environmental media resulting from a spill or discharge that is under the jurisdiction of the other agency, they shall refer the issue to the other agency. The agency that has jurisdiction over the activity that resulted in the improperly managed waste, spill, discharge, or contaminated environmental media will be responsible for measures necessary to monitor, document, and remediate the incident.

(9) Anthropogenic carbon dioxide storage. In determining the proper permitting agency in regard to a particular permit application for a carbon dioxide geologic storage project, the TCEQ and the RRC will coordinate by any appropriate means to review proposed locations, geologic settings, reservoir data, and other jurisdictional criteria specified in Texas Water Code, §27.041.

(f) Radioactive material.

(1) Radioactive substances. Under the Texas Health and Safety Code, §401.011, the TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or NORM waste from other persons, except oil and gas NORM waste;

(C) the recovery or processing of source material;

(D) the processing of by-product material as defined by Texas Health and Safety Code, §401.003(3)(B); and

(E) sites for the disposal of low-level radioactive waste, by-product material, or NORM waste.

(2) NORM waste.

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM waste that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas.

(B) Under Texas Health and Safety Code, §401.412, the TCEQ has jurisdiction over the disposal of NORM that is not oil and gas NORM waste.

(C) The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These non-disposal activities are under the jurisdiction of the Texas Department of State Health Services under Texas Health and Safety Code, §401.011(a).

(3) Drinking water residuals. A person licensed for the commercial disposal of NORM waste from public water systems may dispose of NORM waste only by injection into a Class I injection well permitted under Chapter 331 of this title (relating to Underground Injection Control) that is specifically permitted for the disposal of NORM waste.

(4) Management of radioactive tracer material.

(A) Radioactive tracer material is subject to the definition of low-level radioactive waste under Texas Health and Safety Code, §401.004, and must be handled and disposed of in accordance with the rules of the TCEQ and the Department of State Health Services.

(B) Exemption. Under Texas Health and Safety Code, §401.106, the TCEQ may grant an exemption by rule from a licensing requirement if the TCEQ finds that the exemption will not constitute a significant risk to the public health and safety and the environment.

(5) Coordination with the Texas Radiation Advisory Board. The RRC and the TCEQ will consider recommendations and advice provided by the Texas Radiation Advisory Board that concern either agency's policies or programs related to the development, use, or regulation of a source of radiation. Both agencies will provide written response to the recommendations or advice provided by the advisory board.

(6) Uranium exploration and mining.

(A) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium exploration activities.

(B) Under Texas Natural Resources Code, Chapter 131, the RRC has jurisdiction over uranium mining, except for in situ recovery processes.

(C) Under Texas Water Code, §27.0513, the TCEQ has jurisdiction over injection wells used for uranium mining.

(D) Under Texas Health and Safety Code, §401.2625, the TCEQ has jurisdiction over the licensing of source material recovery and processing or for storage, processing, or disposal of by-product material.

(g) Effective date. This Memorandum of Understanding, as of its May 11, 2020, effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated May 1, 2012.

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 February 13, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 239-6087

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CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

SUBCHAPTER B. REGISTRATION AND FEES

30 TAC §342.26

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §342.26.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill 907 (HB 907 or bill), 86th Texas Legislature, 2019, amends Texas Water Code (TWC), Chapter 28A, relating to Aggregate Production Operations (APOs) by requiring the TCEQ to investigate APOs every two years during the first six years in which the APO is registered, and at least once every three years thereafter. The TCEQ may also conduct unannounced periodic inspections at APOs that were issued notices of violations during

the preceding three-year period. The bill also requires investigations to be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of the TCEQ that are applicable to an active APO.

Additionally, HB 907 increases the maximum annual registration fee for APOs from $1,000 to $1,500, as well as, increases the maximum penalty assessed to an unregistered APO from $10,000 to $20,000 for each year the APO operates without a registration. HB 907 also increases the maximum total penalty assessed to an APO that is operated three or more years without being registered from $25,000 to $40,000.

This proposed rulemaking would amend §342.26 by revising the APO annual registration fee in accordance with HB 907.

Section Discussion

§342.26, Registration Fees

The commission proposes to amend §342.26(b) to replace the monetary amount of "$1,000" with the phrase, "the amount specified in Texas Water Code, Chapter 28A" in order to implement TWC, §28A.101(b), as amended by HB 907. The commission proposes that a dollar amount not be stated in §342.26(b), but instead, refer to the amount provided in TWC, Chapter 28A. The proposed language would implement the increased maximum annual registration fee and offer flexibility to the commission when determining the tier-based fee structure. Additionally, referencing the governing TWC chapter instead of specifying the monetary amount would provide consistency between Chapter 342 and TWC, Chapter 28A, as well as, maintain compliance with future legislation.

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 would be in effect, fiscal implications are anticipated for the agency and the state.

Recent changes to state law increased the maximum fee from $1,000 to $1,500. This proposed rulemaking would remove the maximum fee listed in the Texas Administrative Code (TAC) and instead would reference the maximum fee in state law. The exact fee structure is determined by the executive director, and a tiered system is currently in place. As of November 8, 2019, the agency had 1,011 active APOs. Because a new tiered system has not been developed, the exact amount of additional revenue cannot be projected. Using the current number of registrants, the maximum amount the fee increase could generate would be $505,500 per year.

The agency does not anticipate that units of local government would experience a fiscal implication in the next five years as a result of administration or enforcement of the proposed rule. However, if a unit of local government required registration for an APO, then they would be impacted by the required fee.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be compliance with state law.

The proposed rulemaking is anticipated to result in fiscal implications for businesses or individuals if they own or operate certain APOs. Recent changes to state law increased the maximum fee from $1,000 to $1,500. This proposed rulemaking would remove the maximum fee listed in the TAC and instead would reference the maximum fee in state law. The exact fee structure is determined by the executive director, and a tiered system is currently in place. As of November 8, 2019, the agency had 1,011 active APOs. There is the potential for a maximum fee increase of $500 per APO per year.

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 would not adversely affect a local economy in a material way for the first five years that the proposed rule would be in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rule would be 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 significant 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 would be in effect. The agency uses a tiered fee structure to set the fee for certain APOs. The fee is based on the number of acres of land. It is estimated that the agency regulates 138 APOs that are less than ten acres. These APOs currently pay the lowest level in the tiered structure.

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 would not adversely affect a small or micro-business in a material way for the first five years the proposed rule would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, but it does have the potential to increase the fees paid to the agency. The limit on the fees is removed from TAC and state law is referenced instead. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would 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 consideration of the regulatory analysis of major environmental rules required by Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225(a), because it does not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). The following is a summary of that review.

Texas Government Code, §2001.0225, applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule 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 legislature enacted HB 907, amending TWC, Chapter 28A, which relates to APOs. As the Bill Analysis from the Environmental Regulation Committee of the Texas House of Representatives makes clear, the 86th Texas Legislature enacted HB 907 with the aim of addressing the continued release of eroded sand and silt into waterways from unauthorized APOs by strengthening enforcement on unregistered APOs. HB 907 seeks to address this issue by amending the TWC to increase fines for active APOs that operate without being registered, as mandated in applicable environmental laws and rules; change how the TCEQ regulates APOs; and increase the registration fee collected from APOs by the TCEQ.

Specifically, HB 907 amends TWC, Chapter 28A, by increasing the maximum penalty assessed to an unregistered APO from $10,000 to $20,000 for each year the APO operates without a registration, and increases the maximum total penalty assessed to an APO that is operated three or more years without being registered from $25,000 to $40,000. HB 907 also requires that the TCEQ investigate APOs every two years during the first six years in which the APO is registered, at least once every three years thereafter, allows the TCEQ to conduct unannounced periodic inspections at APOs that were issued notices of violations during the preceding three-year period, requires investigations to be conducted by one or more inspectors trained in the regulatory requirements under the jurisdiction of the TCEQ that are applicable to an active APO, and increases the maximum annual registration fee for APOs from $1,000 to $1,500. This proposed rulemaking would amend §342.26 to revise the APO annual registration fee in accordance with HB 907.

Therefore, the specific intent of the proposed rulemaking is related to strengthening the enforcement of unauthorized APOs by increasing fees for APOs. The proposed rulemaking would amend Chapter 342 to revise the APO annual registration fee in accordance with HB 907. As for the other elements of HB 907, annual regional workplans will be updated to address the bill's increase in investigation frequency of all APOs in the first six years of registration. TCEQ will ensure its APO investigators are trained to be familiar with all regulatory requirements applicable to active APOs under the jurisdiction of the TCEQ, and the TCEQ's Penalty Policy and Penalty Calculation Worksheet will be revised to incorporate the statutorily authorized administrative penalty amounts and changed to the assessed penalty amounts.

Certain aspects of the TCEQ's APO rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the Texas Government Code, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking were a "Major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather conforms TCEQ rules to adopted and effective state laws. Third, it does not come under a delegation agreement or contract with a federal program, and finally, it is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 907. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. Therefore, the commission does not propose the rule solely under the commission's general powers.

The commission invites public comment on the Draft Regulatory Impact Analysis Determination. Written comments 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 it constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis.

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Texas Constitution, Article I, Section 17 or 19; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments in HB 907 by increasing the APO registration fee, which the legislature deemed an effective avenue to strengthen the regulation of APOs. The proposed rulemaking would substantially advance this stated purpose by adopting rule language that increases the registration fee from $1,000 to $1,500.

Promulgation and enforcement of the proposed rule would not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, Texas Government Code, Chapter 2007 does not apply to this proposed rule because the rule does not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking would not apply to or affect any landowner's rights in any private real property because it would 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. The proposed rule is administrative and would not impose any new regulatory requirements. The primary purpose of the proposed rule is to implement HB 907 by increasing the maximum APO registration fee from $1,000 to $1,500. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking would not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 24, 2020, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-130-342-OW. The comment period closes on March 30, 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 Shelby Williams, Water Quality Assessment Section, (512) 239-4968.

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 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; and TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state.

The amendment implements House Bill 907, 86th Texas Legislature (2019), TWC, §§5.013, 5.102, 5.103, and 5.120.

§342.26. Registration Fees.

(a) Any person who submits a registration for an aggregate production operation shall remit, at the time of registration, a fee to the commission.

(b) The executive director shall determine the costs to administer this chapter and the requirements in Texas Water Code, Chapter 28A [~~§28A~~], and establish fees annually to recover the executive director's actual costs. The fees established by the executive director shall not exceed the amount specified in the Texas Water Code, Chapter 28A [~~$1,000~~]. The executive director may implement a tier-based registration fee structure.

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 February 13, 2020.

TRD-202000598
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 293-1806

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING

The Texas Water Development Board ("TWDB" or "board") proposes amendments to §§357.10, 357.11, 357.21, 357.31, 357.33, 357.34, 357.42, 357.43, 357.45, relating to regional water planning.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The purpose of the amendments is to implement changes from House Bill (HB) 807, 86th (R) Legislative Session, and to clarify rules to make them more understandable and uniformly applied by regional water planning groups (RWPGs). The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Subchapter A. General Information.

Section 357.10. Definitions and Acronyms.

The definition of Regional Water Planning Gallons Per Capita Per Day is added to clarify the term as used in regional water planning. This definition aligns with the Texas Water Develop-

ment Board and Texas Commission on Environmental Quality guidance document "Guidance and Methodology for Reporting on Water Conservation and Water Use."

The remaining sections in §357.10 are renumbered to accommodate the addition of §357.10(25).

Section 357.11. Designations.

Section 357.11(d)(7) is revised to expand the eligible participation of the small businesses interest category. The updated ranges are based on information collected by the U.S. Small Business Administration.

Section 357.11(d)(9) is revised to remove Palo Duro River Authority from the required river authority interest category. The authority of the Palo Duro River Authority was revised by HB 1920 during the 85th Legislative Session by the reclassification of the river authority to a local water district.

New section 357.11(k) is added to implement a change to Texas Water Code (TWC) §16.052 made by HB 807, 86th Legislative Session (relating to an Interregional Planning Council). The change requires that the Board appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council is to be considered a Governmental Body in accordance with Texas Government Code §551.001 and must conduct business in accordance with the Texas Open Meetings Act. The Interregional Planning Council is also considered a Governmental Body under Texas Government Code §552.003 and must follow the Texas Public Information Act.

Due to the timing of the current planning cycle, the deliverable date for the Council's report is proposed to coincide with the deliverable date of the adopted 2021 regional water plans (RWP). For state water plan cycles beginning with the 2027 State Water Plan, a deliverable date for the Council's report is proposed to occur in advance of the Initially Prepared Plans to allow for consideration of recommendations by the RWPGs during development of their plans. In future planning cycles, each RWPG will be required to submit an alternate along with their nomination(s). Alternates may assume all responsibilities of the appointed Council member, should the Council member not be able to serve during their term, without additional Board action.

Subchapter B. Guidance Principles and Notice Requirements.

Section 357.21. Notice and Public Participation.

Section 357.21(a) is revised to specify that the collection of certain information related to existing major water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552.

Subchapter C. Planning Activities For Needs Analysis And Strategy Recommendations.

Section 357.31. Projected Population and Water Demands.

Section 357.31(f) is revised to clarify that Population and Water Demand projections shall be presented for each Planning Decade for Water User Groups (WUG) and that Water Demand projections associated with Major Water Providers will be presented for each Planning Decade by category of water use.

Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.

Section 357.33(d) is revised to clarify that the reporting requirements for the social and economic impacts of not meeting Water Needs are only required for WUGs.

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Section 357.34(e)(3)(A) is revised to correct a typographical error.

Section 357.34(g) is added to specify the RWPGs must document in their RWP why certain water management strategies were not recommended, a task that is already required of RWPGs by the contract scopes of work. These strategies include aquifer storage and recovery, seawater desalination, and brackish groundwater desalination.

Section 357.34(h) is added to implement a change to TWC §16.053(e)(10) made by HB 807 (relating to Aquifer Storage and Recovery). The change requires that RWPGs assess the potential for aquifer storage and recovery to meet significant water needs in the planning area, as identified by the RWPG.

Previous sections (g) and (h) are renumbered to (i) and (j), respectively.

Section 357.34(i)(3) is added to implement a change to TWC §16.053(e)(11) made by HB 807 (relating to Gallons Per Capita Per Day Goals). The change requires that RWPGs set specific gallons per capita per day goals for municipal WUGs in the planning region. The use of a drought water use condition (rather than an average water use condition) is proposed to align with the drought condition requirements under which RWPs are developed.

Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation.

Section 357.42. Drought Response Information, Activities, and Recommendations.

Section 357.42(b) is revised to clarify language of drought assessments.

A new section 357.42(b)(1) is added to clarify considerations drought assessments should include.

A new section 357.42(b)(2) is added to implement a change to TWC §16.053(e)(3)(E) made by HB 807 (relating to Drought Response Strategies). The change requires that RWPGs identify unnecessary or counterproductive variations in drought response strategies in the planning region that may confuse the public or impede drought response efforts.

Section 357.42(d) is revised to remove the requirement that the collection of information related to existing major water infrastructure facilities be collected in a closed meeting, to comply with Texas Open Meeting Act requirements and to clarify the minimum content required to be presented in the RWPs.

Section 357.43. Regulatory, Administrative, or Legislative Recommendations.

Section 357.43(b)(2) is revised to clarify that the RWPG shall assess the impact of the RWP on unique stream segments that have been designated by the legislature during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, by any previous legislative session, or recommended as a unique river or stream segment in the RWP.

Section 357.43(d) is revised to implement a change to TWC §16.053(i) made by HB 807 (relating to Recommendations to Improve the Water Planning Process). The change specifies that

RWPs may include recommendations the RWPG believes would improve the planning process.

Section 357.45. Implementation and Comparison to Previous Regional Water Plan.

Section 357.45(b) is added to implement a change to TWC §16.053(e)(12) made by HB 807 (relating to Regionalization). The change requires that the RWPGs assess the progress of regionalization in the planning area.

Previous section 357.34(b) is renumbered to (c).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There may be a change in costs for RWPGs, which are funded by the TWDB. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules. The legislation that this rulemaking seeks to implement did impose additional requirements on the RWPGs. The cost for funding the regional water planning process is provided by the TWDB. These rules do not impose any additional requirements that are not imposed by statute.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to protect water resources of this state as authorized by the Water Code and are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it implements legislation to improve the state water planning process.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has 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 because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes and provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board 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 Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislative changes and clarify existing rules to make them more understandable. The proposed rule would substantially advance this stated purpose by adding language related to legislative changes and clarifying existing language related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and

enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with state law regarding the state water planning process. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

The legislation implemented through this rulemaking may necessitate an increase in future legislative appropriations to the agency to provide funds to the RWPGs to include additional information in the RWPs. The agency received feedback from RWPG stakeholders following the 86th Legislative Session regarding the potential need for additional funding to address the new requirements.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to *rulescomments@twdb.texas.gov* or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.* Include reference to Chapter 357 in the subject line of any comments submitted.

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §357.10, §357.11

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of TWC §§16.052 and 16.053.

Chapter 16 of the TWC is affected by this rulemaking.

§357.10. Definitions and Acronyms.

The following words, used in this chapter, have the following meanings.

(1) Agricultural Water Conservation--Defined in §363.1302 of this title (relating to Definition of Terms).

(2) Alternative Water Management Strategy--A fully evaluated Water Management Strategy that may be substituted into a Regional Water Plan in the event that a recommended Water Management Strategy is no longer recommended.

(3) Availability--Maximum amount of raw water that could be produced by a source during a repeat of the Drought of Record, regardless of whether the supply is physically connected to or legally accessible by Water User Groups.

(4) Board--The Texas Water Development Board.

(5) Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common Wholesale Water Providers, having common sources, or other appropriate associations.

(6) Commission--The Texas Commission on Environmental Quality.

(7) County-Other--An aggregation of utilities and individual water users within a county and not included in paragraph (43)(A) - (D) [~~(42)(A) - (D)~~] of this section.

(8) Drought Contingency Plan--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

(9) Drought Management Measures--Demand management activities to be implemented during drought that may be evaluated and included as Water Management Strategies.

(10) Drought Management Water Management Strategy--A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.

(11) Drought of Record--The period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.

(12) Executive Administrator (EA)--The Executive Administrator of the Board or a designated representative.

(13) Existing Water Supply--Maximum amount of water that is physically and legally accessible from existing sources for immediate use by a Water User Group under a repeat of Drought of Record conditions.

(14) Firm Yield--Maximum water volume a reservoir can provide each year under a repeat of the Drought of Record using anticipated sedimentation rates and assuming that all senior water rights will be totally utilized and all applicable permit conditions met.

(15) Interbasin Transfer of Surface Water--Defined and governed in Texas Water Code §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.

(16) Interregional Conflict--An interregional conflict exists when:

(A) more than one Regional Water Plan includes the same source of water supply for identified and quantified recommended Water Management Strategies and there is insufficient water available to implement such Water Management Strategies; or

(B) in the instance of a recommended Water Management Strategy proposed to be supplied from a different Regional Water Planning Area, the Regional Water Planning Group with the location of the strategy has studied the impacts of the recommended Water Management Strategy on its economic, agricultural, and natural resources,

and demonstrates to the Board that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(17) Intraregional Conflict--A conflict between two or more identified, quantified, and recommended Water Management Strategies in the same Initially Prepared Plan that rely upon the same water source, so that there is not sufficient water available to fully implement all Water Management Strategies and thereby creating an over-allocation of that source.

(18) Initially Prepared Plan (IPP)--Draft Regional Water Plan that is presented at a public hearing in accordance with §357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(19) Major Water Provider (MWP)--A Water User Group or a Wholesale Water Provider of particular significance to the region's water supply as determined by the Regional Water Planning Group. This may include public or private entities that provide water for any water use category.

(20) Modeled Available Groundwater (MAG) Peak Factor--A percentage (e.g., greater than 100 percent) that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, for planning purposes, shall be considered temporarily available for pumping consistent with desired future conditions. The approval of a MAG Peak Factor is not intended as a limit to permits or as guaranteed approval or pre-approval of any future permit application.

(21) Planning Decades--Temporal snapshots of conditions anticipated to occur and presented at even intervals over the planning horizon used to present simultaneous demands, supplies, needs, and strategy volume data. A Water Management Strategy that is shown as providing a supply in the 2040 decade, for example, is assumed to come online in or prior to the year 2040.

(22) Political Subdivision--City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other Political Subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(23) Regional Water Plan (RWP)--The plan adopted or amended by a Regional Water Planning Group pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.

(24) Regional Water Planning Area (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(25) Regional Water Planning Gallons Per Capita Per Day--For Regional Water Planning purposes, Gallons Per Capita Per Day is the annual volume of water pumped, diverted, or purchased minus the volume exported (sold) to other water systems or large industrial facilities divided by 365 and divided by the permanent resident population of the Municipal Water User Group in the regional water planning process. Coastal saline and reused/recycled water is not included in this volume.

(26) [~~(25)~~] Regional Water Planning Group (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(27) [~~(26)~~] RWPG-Estimated Groundwater Availability--The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.

(28) [~~(27)~~] Retail Public Utility--Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, Political Subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

(29) [~~(28)~~] Reuse--Defined in §363.1302 of this title (relating to Definition of Terms).

(30) [~~(29)~~] State Drought Preparedness Plan--A plan, separate from the State Water Plan, that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(31) [~~(30)~~] State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(32) [~~(31)~~] State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

(33) [~~(32)~~] State Water Planning Database--Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect, analyze, and disseminate regional and statewide water planning data.

(34) [~~(33)~~] Technical Memorandum--Documentation of the RWPG's preliminary analysis of Water Demand projections, water Availability, Existing Water Supplies, and Water Needs and declaration of the RWPG's intent of whether or not to pursue simplified planning.

(35) [~~(34)~~] Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(36) [~~(35)~~] Water Conservation Measures--Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies.

(37) [~~(36)~~] Water Conservation Plan--The most current plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 10,000 acre-feet per year or more for irrigation, and the most current plan required by Texas Water Code §13.146 from a Retail Public Utility that provides potable water service to 3,300 or more connections. These plans must include specific, quantified 5-year and 10-year targets for water savings.

(38) [~~(37)~~] Water Conservation Strategy--A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

(39) [~~(38)~~] Water Demand--Volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.

(40) [~~(39)~~] Water Management Strategy (WMS)--A plan to meet a need for additional water by a discrete Water User Group, which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands. A Water Management Strategy may or may not require associated Water Management Strategy Projects to be implemented.

(41) [~~(40)~~] Water Management Strategy Project (WMSP)--Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs.

(42) [~~(41)~~] Water Need--A potential water supply shortage based on the difference between projected Water Demands and Existing Water Supplies.

(43) [~~(42)~~] Water User Group (WUG)--Identified user or group of users for which Water Demands and Existing Water Supplies have been identified and analyzed and plans developed to meet Water Needs. These include:

(A) Privately-owned utilities that provide an average of more than 100 acre-feet per year for municipal use for all owned water systems;

(B) Water systems serving institutions or facilities owned by the state or federal government that provide more than 100 acre-feet per year for municipal use;

(C) All other Retail Public Utilities not covered in subparagraphs (A) and (B) of this paragraph that provide more than 100 acre-feet per year for municipal use;

(D) Collective Reporting Units, or groups of Retail Public Utilities that have a common association and are requested for inclusion by the RWPG;

(E) Municipal and domestic water use, referred to as County-Other, not included in subparagraphs (A) - (D) of this paragraph; and

(F) Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a county in an RWPA.

(44) [~~(43)~~] Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that delivers or sells water wholesale (treated or raw) to WUGs or other WWPs or that the RWPG expects or recommends to deliver or sell water wholesale to WUGs or other WWPs during the period covered by the plan. The RWPGs shall identify the WWPs within each region to be evaluated for plan development.

§357.11. Designations.

(a) The Board shall review and update the designations of RWPAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA. The Board shall provide 30 days notice of its intent to amend the designations of RWPAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs shall be developed, taking into consideration factors such as:

(1) River basin and aquifer delineations;

(2) Water utility development patterns;

(3) Socioeconomic characteristics;

(4) Existing RWPAs;

(5) Political Subdivision boundaries;

(6) Public comment; and

(7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RWPG shall at a minimum address the following elements:

(1) definition of a quorum necessary to conduct business;

(2) method to be used to approve items of business including adoption of RWPs or amendments thereto;

(3) methods to be used to name additional members;

(4) terms and conditions of membership;

(5) methods to record minutes and where minutes will be archived as part of the public record; and

(6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 500 [~~100~~] employees or less than $10 [~~$1~~] million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority [~~and Palo Duro River Authority~~];

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA;

(5) Staff member of the Texas Department of Agriculture designated by its commissioner; and

(6) Staff member of the State Soil and Water Conservation Board designated by its executive director.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures and water conservation practices.

(k) The Board shall appoint an Interregional Planning Council during each state water planning cycle. The Interregional Planning Council will be subject to the following provisions:

(1) The Interregional Planning Council consists of one voting member from each RWPG, as appointed by the Board.

(2) Upon request by the EA, each RWPG shall submit at least one nomination for appointment, including a designated alternate for each nomination.

(3) Interregional Planning Council members will serve until adoption of the State Water Plan.

(4) The Interregional Planning Council, during each planning cycle to develop the State Water Plan, shall hold at least one public meeting and deliver a report to the Board. The report format may be determined by the Council. The report at a minimum shall include a summary of the dates the Council convened, the actions taken, minutes of the meetings, and any recommendations for the Board's consideration, based on the Council's work. Meeting frequency, location, and additional report content shall be determined by the Council.

(5) For the planning cycle of the 2022 State Water Plan, the Council's report shall be delivered to the Board by the 2021 adopted RWP deliverable date as set in regional water planning contracts. Beginning with the planning cycle for the 2027 State Water Plan and each planning cycle thereafter, the report shall be delivered to the Board no later than six (6) months prior to the IPP deliverable date for the corresponding State Water Plan cycle, as set in regional water planning contracts.

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. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

31 TAC §357.21

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of TWC §§16.052 and 16.053.

Chapter 16 of the TWC is affected by this rulemaking.

§357.21. Notice and Public Participation.

(a) Each RWPG and any committee or subcommittee of an RWPG are subject to Chapters 551 and 552, Government Code. A copy of all materials presented or discussed at an open meeting shall be made available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. In addition to the notice requirements of Chapter 551, Government Code, the following requirements apply to RWPGs.

(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; population projection and Water Demand projection revision requests to the EA regarding draft projections; process of identifying potentially feasible WMSs for plans previous to the 2026 RWPs; meetings to replace RWPG members or addition of new RWPG members; submittal of request to EA for approval of an Alternative WMS substitution; declaration of implementation of simplified planning following public hearing on intent to pursue simplified planning; adoption of RWPs; and RWPG committee and subcommittee meetings.

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members; and

(B) any person or entity who has requested notice of RWPG activities.

(5) Notice and agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and Water Demand projection revision requests to officially adopted Board projections; approval to submit Technical Memorandum; substitution of Alternative WMSs; process of identifying potentially feasible WMSs and presentation of analysis of infeasible WMSs or WMSPs for plans beginning with the 2026 plan; and minor amendments to RWPs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet and emailed or mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice of RWPG activities;

(C) each RWPG where a recommended or Alternative WMS being considered would be located; and

(D) for actions associated with infeasible WMSs or WMSPs, each project sponsor of a WMS or WMSP identified as infeasible.

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting; and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.

(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; public hearings on declarations to pursue simplified planning, major amendments to RWPs; and holding hearings for IPPs.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA before the 30th day preceding the date of the public meeting or hearing.

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (9)(A) of this subsection.

(4) RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link, or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(5) Notice shall be mailed to, at a minimum, the following:

(A) Notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) Each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(C) Each county judge of a county located in whole or in part in the RWPA;

(D) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; [~~and~~]

(E) Each [~~each~~] Retail Public Utility, defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission;

(F) Each [~~each~~] holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission;

(G) For [~~for~~] declarations of intent to pursue simplified planning, RWPGs with water supply sources, WMSs, or WMSPs shared with the RWPG declaring intent to pursue simplified planning; and

(H) For [~~for~~] amendments associated with infeasible WMSs or WMSPs, each project sponsor of a WMS or WMSP identified as infeasible.

(6) Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of each county in the RWPA;

(B) Texas Secretary of State website; and

(C) In the *Texas Register.*

(7) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(8) The public hearing for the IPP shall be conducted at a central location readily accessible to the public within the regional water planning area.

(9) Public comments to be accepted as follows:

(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to an RWP or declaration of intent to pursue simplified planning.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when declaring implementation of simplified planning, adopting an RWP or adopting a major amendment to an RWP.

(ii) Comments associated with a preplanning meeting must be considered prior to taking RWPG action.

(e) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply when an RWPG is requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA at least 30 days prior to Board consideration of funding applications.

(3) Notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the RWPA; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(4) Notice shall be mailed to, at a minimum, the following:

(A) Each mayor of a municipality, located in whole or in part in the RWPA, with a population of 1,000 or more or which is a county seat;

(B) Each county judge of a county located in whole or in part in the RWPA;

(C) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(D) All other RWPGs.

(5) Notice shall also be posted on the website of the RWPG or host Political Subdivision.

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. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

31 TAC §§357.31, 357.33, 357.34

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of TWC §§16.052 and 16.053.

Chapter 16 of the TWC is affected by this rulemaking.

SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS.

§357.31. Projected Population and Water Demands.

(a) RWPs shall present projected population and Water Demands by WUG as defined in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split.

(b) RWPs shall present projected Water Demands associated with MWPs by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for the RWPA.

(c) RWPs shall evaluate the current contractual obligations of WUGs and WWPs to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use. The evaluation of contractual obligations under this subsection is limited to determining the amount of water secured by the contract and the duration of the contract.

(d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs shall report how changes in plumbing fixtures would affect projected municipal Water Demands using projections with plumbing code savings provided by the Board or by methods approved by the EA.

(e) Source of population and Water Demands. In developing RWPs, RWPGs shall use:

(1) Population and Water Demand projections developed by the EA that shall be contained in the next State Water Plan and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population or Water Demand projections if the request demonstrates that population or Water Demand projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and Water Demand projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(c) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from an RWPG for revision of population or Water Demand projections.

(f) Population and Water Demand projections shall be presented for each Planning Decade for WUGs in accordance with subsection (a) of this section and MWPs in accordance with subsection (b) of this section [~~WUGs and MWPs~~].

§357.33. Needs Analysis: Comparison of Water Supplies and Demands.

(a) RWPs shall include comparisons of existing water supplies and projected Water Demands to identify Water Needs.

(b) RWPGs shall compare projected Water Demands, developed in accordance with §357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to

WUGs and WWPs in a planning area, as developed in accordance with §357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies. Results shall be reported for WUGs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in an RWPA. Results shall be reported for MWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for the RWPA.

(c) The social and economic impacts of not meeting Water Needs shall be evaluated by RWPGs and reported for each RWPA.

(d) Results of evaluations shall be reported by WUG in accordance with §357.31(a) of this title [~~and MWP in accordance with §357.31(b) of this title~~].

(e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation WMSs or direct Reuse WMSs are recommended. This secondary water needs analysis shall calculate the Water Needs that would remain after assuming all recommended conservation and direct Reuse WMSs are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and MWP and decade.

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

(a) RWPGs shall identify and evaluate potentially feasible WMSs and the WMSPs required to implement those strategies for all WUGs and WWPs with identified Water Needs.

(b) RWPGs shall identify potentially feasible WMSs to meet water supply needs identified in §357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures). Strategies shall be developed for WUGs and WWPs. The strategies shall meet new water supply obligations necessary to implement recommended WMSs of WWPs and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWPs, RWPGs shall provide WMSs to be used during a Drought of Record.

(c) Potentially feasible WMSs may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, seawater desalination, brackish groundwater desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and Drought Management Measures including demand management.

(4) Reuse of wastewater.

(5) Interbasin Transfers of Surface Water.

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code §11.139 (relating to Emergency Authorizations).

(d) All recommended WMSs and WMSPs that are entered into the State Water Planning Database and prioritized by RWPGs shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one planning decade such that additional water is available during Drought of Record conditions. Any other RWPG recommendations regarding permit modifications, operational changes, and/or other infrastructure that are not designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one Planning Decade such that additional water is available during Drought of Record conditions shall be indicated as such and presented separately in the RWP and shall not be eligible for funding from the State Water Implementation Fund for Texas.

(e) Evaluations of potentially feasible WMSs and associated WMSPs shall include the following analyses:

(1) For the purpose of evaluating potentially feasible WMSs, the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who shall consider a written request from an RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all WMSs the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during Drought of Record conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used in calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations of effects on environmental flows shall include consideration of the Commission's adopted environmental flow standards under 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water). If environmental flow standards have not been established, then environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the State Water Plan after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that WMSs are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other WMSs and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to §357.30(7) of this title (relating to De-

scription of the Regional Water Planning Area) including how that threat will be addressed or affected by the WMSs evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code §11.085(k)(1) for Interbasin Transfers of Surface Water. At minimum, this consideration shall include a summation of Water Needs in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended WMSs on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended WMSs to current conditions using best available data.

(9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in §357.22(a)(3) of this title (relating to General Considerations for Development of Regional Water Plans).

(10) Other factors as deemed relevant by the RWPG including recreational impacts.

(f) RWPGs shall evaluate and present potentially feasible WMSs and WMSPs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

(g) If an RWPG does not recommend aquifer storage and recovery strategies, seawater desalination strategies, or brackish groundwater desalination strategies it must document the reason(s) in the RWP.

(h) In instances where an RWPG has determined there are significant identified Water Needs in the RWPA, the RWP shall include an assessment of the potential for aquifer storage and recovery to meet those Water Needs. Each RWPG shall define the threshold to determine whether it has significant identified Water Needs. Each RWP shall include, at a minimum, a description of the methodology used to determine the threshold of significant needs. If a specific assessment is conducted, the assessment may be based on information from existing studies and shall include minimum parameters as defined in contract guidance.

(i) [~~(g)~~] Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending WMSs. RWPs shall incorporate water conservation planning and drought contingency planning in the RWPA.

(1) Drought Management Measures including water demand management. RWPGs shall consider Drought Management Measures for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the Drought Management Measures on Water Needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If an RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, including potentially applicable best management practices, for each identified Water Need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 and §13.146 (relating to Water Conservation Plans) apply. The impact of these water conservation practices on Water Needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271 and §13.146.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271 and §13.146. If RWPGs do not adopt a Water Conservation Strategy to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs shall include a Water Conservation Strategy, pursuant to Texas Water Code §11.085(l), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs shall develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs shall develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices. Strategy evaluation in accordance with this section shall include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits).

(3) RWPGs shall recommend Gallons Per Capita Per Day goal(s) for each municipal WUG or specified groupings of municipal WUGs. Goals must be recommended for each planning decade and may be a specific goal or a range of values. At a minimum, the RWPs shall include Gallons Per Capita Per Day goals based on drought conditions to align with guidance principles in §358.3 of this title (relating to Guidance Principles).

(j) [~~(h)~~] RWPs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPs model Water Conservation Plans pursuant to Texas Water Code §11.1271.

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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Todd Chenoweth
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-7686

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SUBCHAPTER D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

31 TAC §§357.42, 357.43, 357.45

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of TWC §§16.052 and 16.053.

Chapter 16 of the TWC is affected by this rulemaking.

§357.42. Drought Response Information, Activities, and Recommendations.

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, Drought of Record conditions based on the following subsections.

(b) RWPGs shall conduct an [~~overall~~] assessment of current preparations for drought within the RWPA [~~including a description of how water suppliers in the RWPA identify and respond to the onset of drought~~]. This may include information from local Drought Contingency Plans. The assessment shall include:

(1) A description of how water suppliers in the RWPA identify and respond to the onset of drought; and

(2) Identification of unnecessary or counterproductive variations in drought response strategies among water suppliers that may confuse the public or impede drought response efforts. At a minimum, RWPGs shall review and summarize drought response efforts for neighboring communities including the differences in the implementation of outdoor watering restrictions.

(c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with §357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing Drought Contingency Plans.

(d) RWPGs shall collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. At a minimum, the RWP shall include a general description of the methodology used to collect the information, the number of existing and potential emergency interconnects in the RWPA, and a list of which entities are connected to each other. In accordance with Texas Water Code §16.053(r), certain information regarding water infrastructure facilities is excepted from the Public Information Act, Texas Government Code, Chapter 552. [~~this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and~~] Any excepted information collected shall be submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs shall provide general descriptions of local Drought Contingency Plans that involve making emergency connections between water systems or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

(f) RWPGs may designate recommended and alternative Drought Management Water Management Strategies and other recommended drought measures in the RWP including:

(1) List and description of the recommended Drought Management Water Management Strategies and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended Drought Management WMSs;

(2) List and description of alternative Drought Management WMSs and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative Drought Management WMSs;

(3) List of all potentially feasible Drought Management WMSs that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended Drought Management Measures, if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWPs in the event that the Existing Water Supply sources become temporarily unavailable to the WUGs and WWPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and

(3) all County-Other WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

(i) RWPGs shall make drought preparation and response recommendations regarding:

(1) Development of, content contained within, and implementation of local Drought Contingency Plans required by the Commission;

(2) Current drought management preparations in the RWPA including:

(A) drought response triggers; and

(B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model Drought Contingency Plans.

§357.43. Regulatory, Administrative, or Legislative Recommendations.

(a) The RWPs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWPs recommendations for all or parts of river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) An RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in §358.2 of this title (relating to Definitions).

(2) For every river and stream segment that has been designated as a unique river or stream segment by the legislature, including during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended WMSs. The assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.

(c) Unique Sites for Reservoir Construction. An RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at §358.2 of this title shall be used to determine if a site is unique for reservoir construction.

(d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions. This may include recommendations that the RWPG believes would improve the state and regional water planning process.

(e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.

(f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

§357.45. Implementation and Comparison to Previous Regional Water Plan.

(a) RWPGs shall describe the level of implementation of previously recommended WMSs and associated impediments to implementation in accordance with guidance provided by the board. Information on the progress of implementation of all WMSs that were recommended in the previous RWP, including conservation and Drought Management WMSs; and the implementation of WMSPs that have affected progress in meeting the state's future water needs.

(b) RWPGs shall assess the progress of the RWPA in encouraging cooperation between WUGs for the purpose of achieving economies of scale and otherwise incentivizing WMSs that benefit the entire RWPA. This assessment of regionalization shall include:

(1) The number of recommended WMSs in the previously adopted and current RWPs that serve more than one WUG;

(2) The number of implemented WMSs since the previously adopted RWP that serve more than one WUG; and

(3) A description of efforts the RWPG has made to encourage WMSs and WMSPs that serve more than one WUG, and that benefit the entire region.

(c) [~~(b)~~] RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

(1) Water Demand projections;

(2) Drought of Record and hydrologic and modeling assumptions used in planning for the region;

(3) Groundwater and surface water Availability, Existing Water Supplies, and identified Water Needs for WUGs and WWPs; and

(4) Recommended and Alternative WMSs and WMSPs.

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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Todd Chenoweth
General Counsel
Texas Water Development Board
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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB") proposes adding new 31 Texas Administrative Code (TAC) §§371.60 - 371.63, 371.70 - 371.75, 371.80 - 371.91, and amending existing 31 TAC §§371.1, 371.4, 371.14 - 371.17, 371.31, 371.34, 371.36, and 371.41, relating to the Drinking Water State Revolving Fund.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED ADDITIONS AND AMENDMENTS.

The purpose of the additions and amendments is to implement legislative changes from House Bill 3339, 86th (R) Legislative Session and from America's Water Infrastructure Act of 2018 (AWIA), and to implement changes in program management, including addition of remedies for non-compliance. The spe-

cific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE PROPOSED ADDITIONS AND AMENDMENTS.

31 TAC §371.1. Definitions

Section 371.1 is amended to define the term "water conservation plan" as a plan in compliance with Texas Water Code §16.4021, as required by H.B. 3339, 86th (R) Legislative Session, and to include definitions for equivalency projects and non-equivalency projects.

31 TAC §371.4 Federal Requirements

Section 371.4 is amended to comport with revised statutory references in AWIA.

31 TAC §371.14 Lending Rates

Section 371.14 is amended to make the procedure for setting fixed interest rates consistent with the Intended Use Plan (IUP).

31 TAC §371.15 Fees of Financial Assistance

Section 371.15 is amended to clarify the origination fee.

31 TAC §371.16 Terms of Financial Assistance

Section 371.16 is amended to remove mention of specific loan time periods and to provide the terms in the IUP. The AWIA amended the Federal Safe Drinking Water Act to allow loans of up to 30 years for planning, acquisition, design, and/or construction, and up to 40 years for a disadvantaged community.

31 TAC §371.17 Principal Forgiveness

Section 371.17 is amended to clarify that total principal forgiveness may not exceed the percentages established by federal law, appropriations acts, or the terms of the capitalization grant.

31 TAC §371.31 Timeliness of Application and Required Application Information

Section 371.31 is amended to add the requirement that a preliminary engineering feasibility report signed and sealed by a professional engineer be submitted as part of an application, and detailing the information to be included in the report.

31 TAC §371.34 Required Water Conservation Plan and Water Loss Audit

Section 371.34 is amended to require that the water conservation plan comply with Texas Water Code §16.4021, as enacted by H.B. 3339, 86th (R) Legislative Session, and to make other language in the rule consistent with the Clean Water State Revolving Fund statute and rules.

31 TAC §371.36 Multi-Year Commitments

Section 371.36 is amended to tie the terms to the IUP, increasing flexibility for financial assistance recipients and for the agency.

31 TAC §371.41 Environmental Review Process

Section 371.41 is amended to add language stating that for equivalency projects, the Board will inform the Environmental Protection Agency (EPA) when it is necessary for EPA to coordinate with other federal agencies regarding compliance with applicable federal authority.

31 TAC §371.60 Applicability

Section 371.60 is added to outline applicability of the subchapter on engineering review and approval. The existing §371.60 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.61 Engineering Feasibility Report

Section 371.61 is added to replace the rule previously numbered as 371.60. The existing §371.61 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.62 Contract Documents: Review and Approval

Section 371.62 is added to replace the rule previously numbered as 371.61, and amended to include a requirement that Applicants submit an electronic copy of applications and reduce the number of paper copies required unless the Applicant is directed otherwise. The existing §371.62 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.63 Advertising and Awarding Construction Contracts

Section 371.63 is added to replace the rule previously numbered as 371.62. The existing §371.63 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.70 Applicability

Section 371.70 is added to outline applicability of the subchapter on loan closings and availability of funds. The existing §371.70 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.71 Financial Assistance Secured by Bonds or Other Authorized Securities

Section 371.71 is added to replace the rule previously numbered as 371.70. The existing §371.71 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.72 Financial Assistance Secured by Promissory Notes and Deeds of Trust

Section 371.72 is added to replace the rule previously numbered as 371.71. The existing §371.72 is published for repeal elsewhere in this issue of the *Texas Register*.

31 TAC §371.73 Disbursement of Funds

Section 371.73 is added to replace the rule previously numbered as 371.72. The existing §371.73 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.74 Remaining Unused Funds

Section 371.74 is added to replace the rule previously numbered as 371.73 and to clarify the disposition of remaining project funds. The existing §371.74 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.75 Surcharge

Section 371.75 is added to replace the rule previously numbered as 371.74. The existing §371.75 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.80 Applicability

Section 371.80 is added to outline applicability of the subchapter on construction and post-construction requirements. The existing §371.80 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.81 Inspection During Construction

Section 371.81 is added to replace the rule previously numbered as 371.80, to change the term "inspection" to "site visits", and to review compliance with EPA's American Iron and Steel requirements. The existing §371.81 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.82 Alterations During Construction

Section 371.82 is added to replace the rule previously numbered as 371.81. The existing §371.82 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.83 Force Account

Section 371.83 is added to replace the rule previously numbered as 371.82. The existing §371.83 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.84 As Built Plans

Section 371.84 is added to replace the rule previously numbered as 371.83. The existing §371.84 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.85 Certificate of Approval and Project Completion

Section 371.85 is added to replace the rule previously numbered as 371.84. The existing §371.85 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.86 Final Accounting

Section 371.86 is added to replace the rule previously numbered as 371.85. The existing §371.86 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.87 Records Retention

Section 371.87 is added to replace the rule previously numbered as 371.86. The existing §371.87 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.88 Release of Retainage

Section 371.88 is added to replace the rule previously numbered as 371.87. The existing §371.88 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.89 Responsibilities of Applicant

Section 371.89 is added to replace the rule previously numbered as 371.88 and changes the term "water conservation program" to "water conservation plan," the term used in Texas Water Code §16.4021. The existing §371.89 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.90 Authority of the Executive Administrator

Section 371.90 is added to replace the rule previously numbered as 371.89. The existing §371.90 is published for repeal elsewhere in this issue of the *Texas Register.*

31 TAC §371.91 Disallowance of Project Costs and Remedies for Noncompliance

Section 371.91 is added to provide remedies for noncompliance with project rules and financial assistance documents.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Rebecca Treviño, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments resulting from the proposed rulemaking. For the first five years these rules and amendments are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments because the proposed additions and amendments implement statutory requirements and clarify the language in the rules. These rules are not expected to have any impact on state or local revenues. The rules and their administration will not require any increase in expenditures for state or local governments. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are necessary to receive a source of federal funds and are necessary to comply with federal and state law.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Treviño also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no additional cost to the public, and the public will benefit from the rulemaking as it is intended to comply with state law and implement changes in program management, including addition of remedies for non-compliance.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way. For the first five years that the proposed rules are in effect, they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement new requirements in state and federal law and changes in program management within the current framework of the drinking water state revolving fund.

Even if the proposed amendments and rules were major environmental rules, Texas Government Code §2001.0225 still would

not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §§15.604, 15.605, and 16.093. Therefore, the proposed amendments do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board 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 Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated the proposed rules and amendments and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the rules is to implement new requirements in state and federal law and changes in program management within the current framework of the drinking water state revolving fund.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state and federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for the construction of water, wastewater, flood control, and other related projects.

Nevertheless, the board further evaluated the proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require compliance with state and federal laws regarding financial assistance under the state revolving funds without burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined that for the first five years the proposed rules would be in effect, the proposed rules will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The proposed rules implement new requirements in state and federal law and changes in program management within the current framework of the drinking water state revolving fund.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231; by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Include reference to Chapter 371 in the subject line. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §371.1, §371.4

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.1. Definitions.

The following words and terms[~~, when used in this chapter shall~~] have the following meanings when used in this chapter, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here [~~shall~~] have the meanings provided by Chapter 15.

(1) (No change.)

(2) Act--The Federal Safe Drinking Water Act, 42 U.S.C. §300f [~~§§300f~~]et seq.

(3) - (19) (No change.)

(20) Davis-Bacon Act--The federal statute at 40 U.S.C. §3141 [~~§§3141~~] et seq. and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Building or Work Financed in Whole or in Part by Loans or Grants from the United States).

(21) - (28) (No change.)

(29) Equivalency projects--Those funded projects that must follow all federal cross-cutter requirements.

(30) [~~(29)~~] Escrow account--A separate account maintained by an escrow agent until such funds are eligible for release to the construction account.

(31) [~~(30)~~] Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code[,] Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code[,] Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Texas Local Government Code[,] Chapter 104.

(32) [~~(31)~~] Executive administrator--The executive administrator of the Board or a designated representative.

(33) [~~(32)~~] Expiration date--The date on which the Board's offer of financial assistance is no longer open or valid and by which a Closing must occur.

(34) [~~(33)~~] Financial assistance--Funding made available to eligible Applicants as authorized in 40 CFR §35.3525, including principal forgiveness.

(35) [~~(34)~~] Force majeure--Acts of god, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(36) [~~(35)~~] Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation that is characterized as a green project either categorically or by utilizing a business case as approved by the executive administrator.

(37) [~~(36)~~] Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

(38) [~~(37)~~] Initial Invited Projects List--That portion of the Project Priority List listing the eligible projects ranked according to their rating that will initially be invited to submit applications in accordance with procedures and deadlines as detailed in the applicable IUP.

(39) [~~(38)~~] Intended Use Plan (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

(40) [~~(39)~~] Lending rate--The rate of interest applicable to financial assistance that must be repaid.

(41) [~~(40)~~] Market interest rates--Interest rates comparable to those attained for securities in an open market offering.

(42) [~~(41)~~] Municipality--A city, town, or other public body created by or pursuant to state law.

(43) Non-equivalency projects--All projects other than Equivalency projects.

(44) [~~(42)~~] Nonprofit organization--Any legal entity that is recognized as a tax-exempt [~~tax exepmt~~] organization by the Texas Comptroller of Public Accounts pursuant to 34 Texas Administrative Code, Part 1, Chapter 3, Subchapter O (relating to State and Local Sales and Use Taxes).

(45) [~~(43)~~] Nonprofit noncommunity (NPNC) water system--A public water system that is not operated for profit, is owned by a political subdivision or nonprofit entity, and is not a community water system.

(46) [~~(44)~~] Outlay report--The Board's form used to report costs incurred on the project.

(47) [~~(45)~~] Permit--Any permit, license, registration, or other legal document required from any local, regional, state, or federal government for construction of the project.

(48) [~~(46)~~] Person--An individual, corporation, partnership, association, State, municipality, commission, or political subdivision of the State, or any interstate body, as defined by 33 U.S.C. §1362, including a political subdivision as defined by Chapter 15, Subchapter J, of the Texas Water Code, if the person is eligible for financial assistance under the Act.

(49) [~~(47)~~] Planning--The project phase during which the Applicant identifies and evaluates potential alternatives to meet the needs of the proposed project. It includes the environmental review described in Subchapter E of this Chapter and preparation of the engineering feasibility report as described in Subchapter F of this Chapter.

(50) [~~(48)~~] Political subdivision--A municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance, or a nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

(51) [~~(49)~~] Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail water service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official data available from the U.S. Census Bureau for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(52) [~~(50)~~] Primary drinking water regulation--Regulations promulgated by EPA which:

(A) apply to public and private water systems;

(B) specify contaminants which, in the judgment of the EPA, may have any adverse effect on the health of persons;

(C) specify for each such contaminant either:

(i) a maximum contaminant level if, in the judgment of the EPA, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(ii) if, in the judgment of the EPA, it is not economically or technologically feasible to ascertain the level of such contaminant, each treatment technique known to the EPA which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of the Act; and

(D) contain criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels including quality control and testing procedures to insure compliance with such levels and to ensure the proper operation and maintenance of the system, and requirements as to:

(i) the minimum quality of water which may be taken into the system; and

(ii) the siting of new facilities for public water systems.

(53) [~~(51)~~] Principal forgiveness--A type of additional subsidization authorized by 42 U.S.C. §300j-12(d) or federal appropriations acts, as detailed in the Intended Use Plan and principal forgiveness agreement or bond transcript applicable to the project.

(54) [~~(52)~~] Private Placement Memorandum (PPM)--A document functionally similar to an "official statement" used in connection with an offering of municipal securities in a private placement.

(55) [~~(53)~~] Project--The planning, acquisition, environmental review, design, construction, and other activities designed to accomplish the objectives, goals, and policies of the Act.

(56) [~~(54)~~] Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(57) [~~(55)~~] Project Information Form (PIF)--The form that the executive administrator determines must be submitted by Applicants for rating and ranking on an IUP.

(58) [~~(56)~~] Project Priority List--A listing found in the IUP of projects eligible for funding, ranked according to their rating criteria score and that may be further prioritized as described in the applicable IUP.

(59) [~~(57)~~] Public water system--

(A) In General. A system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) Connections. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:

(i) the water is used exclusively for purposes other than residential use (consisting of drinking, bathing, cooking, or other similar uses);

(ii) the EPA or the Commission determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(iii) the EPA or the Commission determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(C) Irrigation districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subparagraph (B)(ii) and (iii) of this paragraph.

(D) Transition period. A water supplier that would be a public water system only as a result of modifications made shall not be considered a public water system until two years after August 6, 1996. If a water supplier does not serve 15 service connections or 25 people at any time after the conclusion of the two-year period, the water supplier shall not be considered a public water system.

(60) [~~(58)~~] Ready to proceed--A project for which available information indicates that there are no significant permitting, land acquisition, social, contractual, environmental, engineering, or financial issues that would keep the project from proceeding in a timely manner to the construction phase of the project.

(61) [~~(59)~~] Release of funds--The sequence and timing for Applicant's release of financial assistance funds from the escrow account to the construction account.

(62) [~~(60)~~] Secondary drinking water regulation--Regulations promulgated by EPA which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the EPA, are necessary to protect the public welfare. Such regulations may vary according to geographic and other circumstances and may apply to any contaminant in drinking water:

(A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

(B) which may otherwise adversely affect the public welfare.

(63) [~~(61)~~] Small water system--A system that serves ten thousand persons or fewer.

(64) [~~(62)~~] State--The State of Texas.

(65) [~~(63)~~] Subsidy--A reduction in the interest rate from the market interest rate.

(66) [~~(64)~~] Utility Commission--The Public Utility Commission of Texas.

(67) [~~(65)~~] Water conservation plan--A plan that complies with the requirements of Texas Water Code §16.4021. [~~report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area.~~]

[~~(66) Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.~~]

§371.4. Federal Requirements.

(a) Davis-Bacon Act Prevailing Wage Provision. The Applicant must comply with the requirements of section 1452(a)(5) [~~1450(e)~~] of the Act (42 U.S.C. §300j-12(a)(5)) [~~(42 U.S.C. §300j-9(e))~~] in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors, and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. The Davis-Bacon prevailing wage requirements, as provided in 40 U.S.C. §§3141 - 3148 [~~et seq.~~] and the Department of Labor's implementing regulations, apply to any construction project funded by the DWSRF.

(b) (No change.)

(c) Signage. Equivalency projects [~~Projects~~] must comply with the EPA signage requirements implemented to enhance public awareness of DWSRF projects.

(d) - (e) (No change.)

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

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Todd Chenoweth
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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§371.14 - 371.17

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.14. Lending Rates.

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

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

(b) Procedure for setting fixed interest rates.

(1) The executive administrator will set fixed interest rates as described in the IUP and further determined in this section, on a date that is:

(A) no earlier than five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the borrower's execution of a loan agreement, but may be based on interest rate levels determined as of an earlier date; and

(B) (No change.)

(2) (No change.)

(c) - (f) (No change.)

§371.15. Fees of Financial Assistance.

(a) General. The Applicant will be assessed charges for [~~the purpose of~~] recovering administrative costs of all projects receiving DWSRF financial assistance. However, no fees or costs will [~~shall~~] be assessed on the portion of the project that receives principal forgiveness as detailed in the IUP.

(b) Origination fee. An administrative fee not to exceed 2 [~~2.25~~] percent of the project costs will be assessed[~~,~~] as a one-time non-refundable charge. Project costs on [~~upon~~] which the fee will be assessed do not include the origination fee or those project costs that are funded through principal forgiveness. The fee is due and payable at the time of closing and may be financed as a part of the financial assistance.

§371.16. Term of Financial Assistance.

The Board may offer financial assistance in accordance with the Act and the IUP under which the project received funding.

[~~(a) The Board may offer financial assistance up to 20 years for the planning, acquisition, design and/or construction of a project, in accordance with the Act and the IUP under which the project received funding.~~]

[~~(b) In accordance with the Act and notwithstanding the terms in subsection (a) of this section, the Board may offer financial assistance in excess of 20 years, up to 30 years for:~~]

[~~(1) a disadvantaged community, provided that the financial assistance does not exceed the expected design life of an eligible project; or~~]

[~~(2) the purchase of bonds issued by a municipality, provided the financial assistance does not exceed the useful life of the underlying asset.~~]

§371.17. Principal Forgiveness.

(a) (No change.)

(b) Total amount of principal forgiveness. The total amount of principal forgiveness may not exceed the percentages established by federal law, appropriations acts, or by the terms of the capitalization grant.

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§371.31, 371.34, 371.36

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.31. Timeliness of Application and Required Application Information.

(a) Time to submit applications. Applications and required additional data or information, must be submitted by the deadlines established by the executive administrator. Failure [~~in a timely basis. The failure~~] to timely submit the application, the information necessary to complete the application or additional requested information will result in the bypass of the project.

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

(b) Required application information. For eligible public Applicants and eligible NPNC Applicants that are also eligible public Applicants, an application must [~~shall~~] be in the form and number of copies prescribed by the executive administrator and, in addition to any

other information that may be required by the executive administrator or the Board, the Applicant shall provide the following documentation:

(1) a resolution from its governing body that must [~~shall~~]:

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

(2) (No change.)

(3) copies of the following project documents:

(A) (No change.)

(B) contracts for engineering services must [~~should~~] include the scope of services, level of effort, costs, project schedules, and other information necessary for adequate review by the executive administrator. A project schedule must [~~shall~~] be provided with the contract; the schedule must provide firm timelines for the completion of each phase of a project and note the milestones within the phase of the project;

(4) - (9) (No change.)

(10) an audit of the Applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, unless an alternative method of establishing a reliable accounting of the financial records of the Applicant is approved by the executive administrator; [~~and~~]

(11) a listing of all the funds used for the project, including funds already expended from sources other than financial assistance offered from the Board, such as from participating local government entities or prior-issued debt; and[~~.~~]

(12) a Preliminary Engineering Feasibility Report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, must provide:

(A) a description and purpose of the project;

(B) the entities to be served and current and future population;

(C) the cost of the project;

(D) a description of alternatives considered and reasons for the selection of the project proposed;

(E) sufficient information to evaluate the engineering feasibility of the project;

(F) maps and drawings as necessary to locate and describe the project area; and

(G) any other information the executive administrator determines is necessary to evaluate the project.

(c) (No change.)

§371.34. Required Water Conservation Plan and Water Loss Audit.

(a) Water Conservation Plan. An Applicant shall submit a water conservation plan prepared in accordance with Texas Water Code §16.4021 [~~§363.15 of this title (relating to Required Water Conservation Plan)~~].

(b) (No change.)

(c) If an applicant that is a retail public utility providing potable water has a [~~utility's total~~] water loss that meets or exceeds the threshold for that utility in accordance with §358.6 of this title, the retail public utility must use a portion of any financial assistance received from the DWSRF, or any additional financial assistance provided by the Board, to mitigate the utility's water loss. However, at the request of a retail public utility, the Board may waive this requirement in accordance with §358.6 of this title.

§371.36. Multi-Year [~~Multi year~~] Commitments.

(a) Commitment periods may be set for a period of up to five years. The minimum interest rate reduction for [~~the~~] multi-year commitments will be established for the five-year [~~five year~~] period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

(b) This option is only available for projects as described in the IUP. [~~that do not receive principal forgiveness based on the affordability criteria. However, the entity receiving a multi-year commitment may receive principal forgiveness for the other eligible options, such as principal forgiveness for green projects, for the amount of funds committed for the initial year.~~]

(c) (No change.)

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

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §371.41

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.41. Environmental Review Process.

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the DWSRF. Environmental review of all proposed infrastructure projects is a condition of the use of DWSRF financial assistance and is subject to annual audits by the EPA. This subchapter follows the procedures established by the EPA for implementing the National Environmental Policy Act set forth at 40 CFR Part 6. The environmental review process described in this subchapter applies to the maximum extent legally and practicably feasible. However, the environmental review process may be modified due to an emergency condition as described in §371.40(3) of this title (relating to Definitions). The environmental review is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the findings resulting from the environmental review.

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

(e) Equivalency projects. The Board will inform EPA when consultation or coordination by EPA with other federal agencies is necessary to resolve issues regarding compliance with applicable federal laws.

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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§371.60 - 371.63

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.60. Applicability.

This subchapter applies to financial assistance for non-equivalency and equivalency projects.

§371.61. Engineering Feasibility Report.

(a) The Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State. The report, based on guidelines provided by the executive administrator, must provide:

(1) a description and purpose of the project;

(2) the names of the entities to be served, along with the current and future population;

(3) the cost of the project;

(4) a description of the alternatives considered and reasons for selection of the project proposed;

(5) sufficient information to evaluate the engineering feasibility;

(6) maps and drawings as necessary to locate and describe the project area;

(7) sufficient detail to document how the project will remedy the drinking water issues and problems that were evaluated for rating on the IUP;

(8) information showing that the project is cost effective; and for projects that implement new systems or significantly alter current systems, a detailed cost-effective analysis, including detailed operation and maintenance costs, may be requested to document program eligibility;

(9) a detailed project schedule with timelines for each phase of the project and the milestones within each phase of the project; and

(10) any other information or data necessary to evaluate the proposed project. The Applicant must submit any additional information requested by the executive administrator to document the project's eligibility for funding by the program.

(b) Approval of engineering feasibility report. The executive administrator will approve the engineering feasibility report when:

(1) the items listed in subsection (a) of this section have been completed, including requests for additional information or data;

(2) the appropriate environmental findings have been completed in accordance with this chapter and the Applicant has agreed to incorporate into project documents, including contracts, all mitigation measures as a result of the environmental review; and

(3) the project and alternatives to the project have been analyzed and the proposed project is cost effective.

(c) Request for project amendment. After the approval of the engineering feasibility report, a request to amend a project will be granted only if implementation of the amendment does not affect the original purpose of the project. The implementation of a project amendment must remedy the problems and issues identified in the Applicant's original project information form. Significant amendments to a project require previous approval by the executive administrator. The Applicant must:

(1) provide a description of and the need for an amendment;

(2) submit additional engineering or environmental information as requested by the executive administrator;

(3) provide an estimate of any increase or decrease in total project costs resulting from the proposed amendment; and

(4) certify that the proposed amendment will not significantly alter the purpose of the project.

(d) Alternative methods of project delivery. Design build, construction manager at-risk, and other alternative methods of project delivery are eligible for available financial assistance, including combinations of planning, design and construction funding, in accordance with programmatic requirements. The executive administrator will provide written guidance regarding modifications of the type of financial assistance, and the review, approval, and release of funds processes for alternative delivery projects. The Board may specify special conditions in the commitment as appropriate to accommodate an alternative method of project delivery.

§371.62. Contract Documents: Review and Approval.

(a) Contract documents include the documents that form the construction contracts and the documents that form the contracts for alternative methods of project delivery, which may include the construction phase or other phases of the project.

(b) Unless otherwise specified by the executive administrator, an Applicant must submit at least one paper and one electronic copy of proposed contract documents, including engineering plans and specifications, which must be as detailed as would be required for submission to contractors bidding on the work. The Applicant must provide the executive administrator with all contract documents proposed for bid advertising. The executive administrator will review contract documents:

(1) to ensure consistency with the approved engineering feasibility report and with approved environmental planning documents;

(2) to ensure the proposed construction drawings and specifications provide adequate information so that a contractor can bid and construct the project without additional details or directions;

(3) to ensure compliance with Commission rules at Title 30 Texas Administrative Code Chapter 290 relating to Public Drinking Water, and other applicable state and federal laws and rules;

(4) to ensure the contract documents notify the contractor about the Board's authority to audit project files and inspect during construction; and

(5) to ensure compliance with other requirements as provided in guidance forms and documents, including any additional documentation required by EPA for equivalency projects.

(c) Other approvals. The Applicant must obtain the approval of the plans and specifications from any other local, state, and federal agencies having jurisdiction over the project. The executive administrator's approval is not an assumption of the Applicant's liability or responsibility to conform to all requirements of applicable laws relating to design, construction, operation, or performance of the project.

§371.63. Advertising and Awarding Construction Contracts.

(a) Applicable laws and rules. The Applicant shall comply with State procurement laws and rules and with applicable federal procurement rules, depending on the equivalency requirements for the financial assistance.

(b) Executive administrator approval required. The Applicant shall not proceed to advertising for bids on the project without express written approval of the solicitation documents by the executive administrator. If the applicant proceeds to advertising without approval, it may affect eligibility for funding.

(c) Changes prior to award. If the Applicant needs to alter the plans, specifications, or contract documents after the executive administrator's approval, then the Applicant shall:

(1) provide the information and reasons relating to the changes therefore, if changes are required prior to bidding. The executive administrator must affirmatively approve any changes prior to advertising.

(2) incorporate changes that occur after advertising into an addendum and provided to the executive administrator for approval as part of the bidding process.

(d) Contract award. The text of a construction contract or a contract containing construction phase work submitted for approval prior to advertising must contain the same language and provisions as the contingently executed contract.

(e) Pre-construction conference. The Applicant shall conduct a preconstruction conference on significant construction contracts to address the contents of the executed contract documents with the project owner, the project engineer, the prime contractor, and other appropriate parties in attendance. The Applicant shall provide the executive administrator with at least 10 days advance notice of the date, time, and location of the conference.

(f) Notice to proceed. The executive administrator shall review the executed contract documents, including any additional documentation required by EPA for equivalency projects, and upon acceptance of same shall advise the Applicant that a notice to proceed may be issued to the contractor.

(g) No liability. The executive administrator and the Board have no liability for any event arising out of or in any way related to project contracts or construction.

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

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.75

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.70. Applicability.

This subchapter applies to financial assistance for non-equivalency and equivalency projects.

§371.71. Financial Assistance Secured by Bonds or Other Authorized Securities.

(a) Applicability and required documents. This section applies to closings for financial assistance with entities issuing bonds or other authorized securities. The following documents and conditions are required for closing financial assistance secured by bonds or other authorized securities:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board that is acceptable to the executive administrator. The ordinance or resolution must have sections providing as follows:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing then an escrow account separate from all other accounts and funds must be created, as follows:

(i) the account must be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(ii) funds cannot be released from the escrow account without prior written approval from the executive administrator, who shall issue written authorization for the release of funds;

(iii) escrow account statements must be provided to the executive administrator upon request;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account must be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code Chapter 2256; and

(v) the escrow account must be adequately collateralized in a manner sufficient to protect the Board's interest in the project and in compliance with the Public Funds Collateral Act, Texas Government Code Chapter 2257.

(B) the Applicant shall fix and maintain rates in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) a construction account must be created and must be kept separate from all other accounts and funds of the Applicant;

(D) bonds must be closed in book-entry-only form;

(E) the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant is required;

(F) the payment of all DTC closing fees assessed by the Board's custodian bank must be directed to the Board's custodian bank by the Applicant;

(G) the Applicant must provide evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(H) all payments, including the origination fee, must be made to the Board via wire transfer at no cost to the Board;

(I) insurance coverage must be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(J) the Applicant, or an obligated person for whom financial or operating data is presented, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, must undertake in a written agreement or contract to comply with requirements for continuing disclosure as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule. Such continuing disclosure undertaking is for the benefit of the Board and the beneficial owner of the political subdivision's obligations if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution required in paragraph (2) of this subsection must also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds, or other relevant requirements regarding the securities held by the Board;

(K) current, accurate, and complete records and accounts must be maintained in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(L) the Applicant must annually submit an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;

(M) the Applicant must submit a final accounting within 60 days of project completion;

(N) the Applicant must document the adoption and implementation of an approved water conservation plan for the duration of the financial assistance;

(O) the Applicant must comply with special environmental conditions specified in the Board's environmental finding as well as with any applicable Board laws or rules relating to use of the financial assistance;

(P) the Applicant must establish a dedicated source of revenue for repayment of the financial assistance;

(Q) interest payments must commence no later than one year after the date of closing;

(R) annual principal payments must commence no later than 18 months after completion of project construction; and

(S) any other recitals mandated by the executive administrator.

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding;

(6) if the project will result in the development of surface water or groundwater resources, the Applicant must provide information showing that it has the legal right to use the water that the project will provide. Upon receipt of the information, the executive administrator will prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition, and design activities. Prior to the release of funds for construction, a written water rights certification will be prepared by the executive administrator. The certification will be based on the Applicant's information showing the necessary water rights have been acquired.

(7) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(8) a Private Placement Memorandum containing a detailed description of the issuance of the debt to be sold to the Board. The Applicant must submit a draft Private Placement Memorandum at least 30 days before closing of the financial assistance; a final electronic version of the Memorandum must be submitted no later than seven days before closing,

(9) when any portion of the financial assistance is to be held in an escrow account, the Applicant must execute an escrow agreement approved as to form and substance by the executive administrator;

(10) if applicable, a home rule municipality pursuant to Texas Local Government Code Chapter 104 must execute a Certification of Trust as defined in §371.1 of this title; and

(11) any additional information specified in writing by the executive administrator.

(b) Certified bond transcript. Within sixty (60) days of closing the financial assistance, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board which must contain those instruments normally furnished by a purchaser of debt.

(c) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition, and construction, or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

(d) Financial assistance consisting of 100 percent principal forgiveness. Notwithstanding subsection (a) of this section, the following documents are required for closing financial assistance consisting of 100 percent principal forgiveness:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed principal forgiveness agreement adopted by the governing body that is acceptable to the executive administrator. The agreement must have the following sections:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing, then an escrow account separate from all other accounts and funds must be created, as follows:

(i) the account must be maintained by an escrow agent as defined in §371.1 of this title;

(ii) funds cannot be released from the escrow account without prior written approval from the executive administrator, who shall issue written authorization for the release of funds;

(iii) escrow account statements must be provided to the executive administrator upon request;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account must be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code Chapter 2256; and

(v) the escrow account musts be adequately collateralized in a manner sufficient to protect the Board's interest in the project and in compliance with the Public Funds Collateral Act, Texas Government Code Chapter 2257;

(B) the Applicant must fix and maintain rates in accordance with state law and collect charges to provide adequate operation and maintenance of the project;

(C) a construction account separate from all other accounts and funds of the Applicant must be created;

(D) insurance coverage must be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(E) the Applicant, or an obligated person for whom financial or operating data is presented, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, must undertake in a written agreement or contract to comply with requirements for continuing disclosure as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule. Such continuing disclosure undertaking is for the benefit of the Board and the beneficial owner of the political subdivision's obligations if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution required in subsection (a)(2) of this section must also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds, or other relevant requirements regarding the securities held by the Board;

(F) current, accurate, and complete records and accounts must be maintained in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(G) the Applicant must annually submit an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;

(H) the Applicant must submit a final accounting within 60 days of the completion of the project;

(I) the Applicant must document the adoption and implementation of an approved water conservation plan for the duration of the financial assistance;

(J) the Applicant must comply with special environmental conditions specified in the Board's environmental finding as well as with any applicable Board laws or rules relating to use of the financial assistance;

(3) assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding;

(4) if the project will result in the development of surface water or groundwater resources, the Applicant must provide information showing that it has the legal right to use the water that the project will provide. Upon receipt of the information, the executive administrator will prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition, and design activities. Prior to the release of funds for construction, a written water rights certification will be prepared by the executive administrator. The certification will be based upon the Applicant's information showing the necessary water rights have been acquired;

(5) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(6) when any portion of the financial assistance is to be held in an escrow account, the Applicant must execute an escrow agreement approved as to form and substance by the executive administrator;

(7) if applicable, a home rule municipality pursuant to Texas Local Government Code Chapter 104 must execute a Certification of Trust as defined in §371.1 of this title; and

(8) any additional information specified in writing by the executive administrator.

§371.72. Financial Assistance Secured by Promissory Notes and Deeds of Trust.

(a) Applicability. This section contains closing requirements for a water supply corporation, an eligible NPNC, or an eligible private Applicant or other Applicant that is not authorized to issue bonds or other securities. This section applies to financial assistance for either pre-design or construction funding.

(b) Use of consultants. The executive administrator may recommend, but not require, that the entity engage the services of a fi-

nancial advisor or other consultant to ensure the appropriateness of the proposed debt and to provide advice to the entity.

(c) Documents required for closing. The following documents and conditions are required for closing financial assistance secured by promissory notes and deeds of trust:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed promissory note and loan agreement in a form approved by the executive administrator;

(3) a Deed of Trust and Security Agreement that must contain a first mortgage lien evidenced by a deed of trust on all the real and personal property of the water system; provided, however, this is not needed if the financial assistance consists of 100 percent principal forgiveness;

(4) an owner's title insurance policy for the benefit of the Board covering all the real property identified in the deed of trust; provided, however, this is not needed if the financial assistance consists of 100 percent principal forgiveness;

(5) evidence that the rates on which the Applicant intends to rely for repayment of the financial assistance have received final and binding approval from the Utility Commission and, for Applicants required to utilize a surcharge account, evidence that the approval of the Utility Commission was conditioned on the creation of a surcharge account;

(6) a certified copy of the resolution adopted by the governing body authorizing the indebtedness and a certificate from the secretary of the governing body attesting to adoption of the resolution in accordance with the bylaws or rules of the governing body and in compliance with the Open Meetings Act, if applicable;

(7) a legal opinion from Applicant's counsel that provides:

(A) that the entity has the legal authority to enter into the loan agreement and to execute a promissory note;

(B) that the entity is not in breach or default of any state or federal order, judgment, decree, or other instrument which would have a material effect on the loan transaction;

(C) that there is no pending suit, action, proceeding, or investigation by a public entity that would materially adversely affect the enforceability or validity of the required financial assistance documents;

(D) evidence that the entity is in good standing with the Texas Office of the Secretary of State; and

(E) a statement addressing any other issues deemed relevant by the executive administrator.

(8) evidence that an approved water conservation plan has been adopted and will be implemented through the life of the project;

(9) evidence of the Applicant's agreement to comply with special environmental conditions contained in the Board's environmental finding;

(10) evidence that the Applicant has established a dedicated source of revenue for repayment of the financial assistance;

(11) evidence that the Applicant has adopted final water rates and charges that are not subject to appeal to the Utility Commission;

(12) copies of executed service and revenue contracts;

(13) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(14) if the project will result in the development of surface water or groundwater resources, the Applicant must provide information showing that it has the legal right to use the water that the project will provide. Upon receipt of the information, the executive administrator will prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition, and design activities. Prior to the release of funds for construction, a written water rights certification must be prepared by the executive administrator. The certification will be based on the Applicant's information showing the necessary water rights have been acquired.

(15) when any portion of the financial assistance is to be held in an escrow account, the Applicant shall execute an escrow agreement, approved as to form and substance by the executive administrator; and

(16) any additional information specified in writing by the executive administrator.

(d) if financial assistance proceeds are to be deposited into an escrow account at the time of closing, then an escrow account separate from all other accounts and funds must be created, as follows:

(1) the account must be maintained by an escrow agent as defined in §371.1 of this title (relating to Definitions);

(2) funds cannot be released from the escrow account without prior written approval of the executive administrator, who shall issue written authorization for the release of funds;

(3) escrow account statements must be provided to the executive administrator upon request;

(4) the investment of any financial assistance proceeds deposited into an approved escrow account, must be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code Chapter 2256; and

(5) the escrow account must be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code Chapter 2257.

(e) Construction account. A construction account must be created and must be kept separate from all other accounts and funds of the Applicant.

(f) Phased closing. The executive administrator may determine that closing the financial assistance in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition, and construction, or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

§371.73. Disbursement of Funds.

(a) Escrow of funds. The executive administrator may deposit funds into an escrow account at the time of closing of the financial assistance. Releases from an escrow account must occur sequentially as described in subsection (c) of this section or in accordance with phasing required for the applicable project. The Applicant must submit outlays for all expenses incurred.

(b) Reimbursement method of accessing funds. DWSRF financial assistance is available for disbursement under a reimbursement method unless the executive administrator approves the deposit of funds into an escrow account at the closing of the financial assistance, as appropriate. The executive administrator will reimburse the Applicant's expenditures upon the receipt of an outlay report supported by detailed invoices of expenditures, or the executive administrator may issue a written authorization for the release of funds from an escrow account based on the receipt of outlay reports supported by detailed invoices of expenditures. The outlays and releases from an escrow account must be consistent with the approved project schedule.

(c) Sequence of availability of funds. Financial assistance is available for disbursement in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan;

(2) for design costs, after receipt of executed contracts for design, after approval of an engineering feasibility report, and after completion of the environmental review; and

(3) for construction costs, after issuance of any applicable permits, after acquisition documents and contract documents (including plans and specifications) are approved and executed, and after the executive administrator has approved the issuance of a Notice to Proceed.

(d) Outlay reports. Applicant's outlay reports must be supported by detailed invoices for incurred costs as the project progresses in accordance with the project schedule. Outlay reports must be submitted in a form determined by the executive administrator, and on the following schedule:

(1) for financial assistance for planning, acquisition, and design, quarterly; and

(2) for financial assistance for construction, monthly.

(e) Consistency for project schedules and outlays. Projects must proceed in accordance with approved project schedules as closely as possible.

§371.74. Remaining Unused Funds.

(a) Remaining unused funds are those funds unspent after the original approved project is completed. Remaining unused funds may be spent for enhancements to the original project upon written approval by the executive administrator, including green components.

(b) If there are no enhancements authorized, the Applicant must submit a final accounting and disposition of any unused funds as specified in §371.86 of this title (relating to Final Accounting).

§371.75. Surcharge.

For eligible private Applicants and eligible NPNC Applicants that are not also eligible public Applicants, the establishment of a surcharge and creation of a surcharge account is required. If the executive administrator determines that the use of a surcharge and surcharge account is not available to an Applicant through the Utility Commission, the executive administrator may recommend that the Board consider other sources of revenue available to an Applicant for repayment of financial assistance from the Board.

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

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General Counsel
Texas Water Development Board
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SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

31 TAC §§371.80 - 371.91

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§371.80. Applicability.

This subchapter applies to financial assistance for non-equivalency and equivalency projects.

§371.81. Inspection During Construction.

(a) Applicant's inspection. The Applicant shall provide for the adequate qualified inspection of the project under the supervision of a registered engineer and shall require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans, specifications, and other engineering design or permit documents, approved alterations or changes, in accordance with the requirements in the environmental finding applicable to the project, and using sound engineering principles and construction practices.

(b) Board's site visits. The executive administrator may conduct site visits regarding the construction and materials of a project at any time. The purpose of site visits is to determine whether the contractor is substantially complying with the approved engineering plans for the project and is constructing the project in accordance with the approved project schedule. The site visits do not subject the state to any civil liability.

(c) Scope of inspections. Inspections may include, but are not limited to:

(1) on-site observations and review of the conditions at the construction sites, including compliance with environmental mitigation measures;

(2) review of documents related to the construction projects, including but not limited to:

(A) payroll, daily attendance, and any other records relating to person employed during the construction, and records relating to the Davis-Bacon Act and related federal laws and regulations regarding prevailing wage rates;

(B) invoices, receipts for materials, accounting ledgers, and any other documents related to expenditure of funds to facilitate tracking the project's progress;

(C) evidence of testing of installed materials and equipment;

(D) deviations from approved plans and specifications;

(E) change orders and supporting documents;

(F) compliance with EPA's American Iron and Steel requirements; and

(G) review of any other documents to ensure compliance with the terms of the approved contract documents and the Board's rules.

(d) The executive administrator may document issues to ensure compliance with applicable laws, rules, and contract documents, and may recommend to the owner that certain corrective actions occur to ensure compliance with laws, rules, and approved plans and specifications.

(e) The Applicant must provide the executive administrator with a response to any documented issues relating to compliance.

§371.82. Alterations During Construction.

(a) Changes after approval of engineering feasibility report. The Applicant must notify the executive administrator of any changes to the project that occur after the approval of the report but prior to the start of construction. The executive administrator will review the proposed changes and notify the Applicant if additional engineering or other information is required. For facilities required to have Commission approval, the Commission must give its approval before any substantial or material changes are made in the plans. No changes may be implemented without the express written approval of the executive administrator.

(b) Changes during construction. Any proposed change to the construction contract must be submitted to the executive administrator in the form of a formal change order; the proposed change will be reviewed for compliance with program requirements and applicable Commission rules. Depending on the scope and complexity of the proposed change, approval by the executive administrator also may require amendments to other engineering and environmental documents and coordination with the Commission for issues involving variances to Commission rules.

§371.83. Force Account.

All significant elements of a project must be constructed with skilled laborers and mechanics obtained through the competitive bidding process. The Applicant, with the prior approval of the executive administrator, may utilize its own employees and equipment for inspection or minor construction upon showing that Applicant possesses the competence required to accomplish such work and that the work can be accomplished more economically by use of the force account method.

§371.84. As Built Plans.

After a project is completed, the Applicant shall notify the executive administrator of the receipt of a complete set of as-built drawings of the project from the project construction engineer.

§371.85. Certificate of Approval and Project Completion.

(a) Purpose. The executive administrator will issue a Certificate of Approval (certificate) upon completion of all work under each prime construction contract.

(b) Final prime construction contract. A certificate will be issued at the completion of all work under the final prime construction contract. This certificate will be transmitted to the Applicant with a statement that the project and the Board's inspection process are complete.

§371.86. Final Accounting.

(a) Within 60 days of Applicant's receipt of the Certificate of Approval for the final prime construction contract and the final inspection report, the Applicant shall submit a final accounting and a final funds requisition form.

(b) After the final accounting, the executive administrator will notify the Applicant if remaining surplus funds exist and advise the Applicant that any remaining surplus funds may be used in a manner approved by the executive administrator.

§371.87 Records Retention.

The Applicant must retain all documents, records, and invoices whether in electronic form or otherwise relating to the expenditure of all financial assistance from the DWSRF for a period of three full state fiscal years after completion of the project and receipt of the final certificate of approval.

§371.88. Release of Retainage.

(a) Retainage. The Applicant will withhold a minimum of five percent of each progress payment throughout the course of the construction contract.

(b) Full release of retainage. The executive administrator will approve the full release of retainage on a contract when:

(1) the Applicant's engineer approves the contractor's request for release of retainage; and

(2) the Applicant's governing body approves the release of retainage; and

(3) the executive administrator issues the Certificate of Approval.

(c) Partial release of retainage. If the executive administrator determines that a project is substantially complete, the executive administrator may approve a partial release of retainage.

§371.89. Responsibilities of Applicant.

After the satisfactory completion of the project, the Applicant remains responsible for compliance with applicable laws and rules relating to the project and to the financial assistance documents, including but not limited to submission of an annual audit, implementation and enforcement of the approved water conservation plan and other assurances made to the Board. The Board has a continuing interest in the State's investment; therefore, the Applicant will be subject to the continuing authority of the Board and the executive administrator through final payment of the financial assistance.

§371.90. Authority of the Executive Administrator.

(a) The financial assistance provided by the Board is based on the project's economic feasibility, and the Board shares the Applicant's desire to maintain this feasibility in the project's operation and maintenance at all times. The executive administrator will periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the Board requires in order to perform its duties and to protect the public interest.

(b) After construction is complete and the Applicant has completed construction, the executive administrator is authorized to:

(1) inspect the project at any time. If the executive administrator determines that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not

being properly fulfilled or that integrity of the State's investment is being endangered, the executive administrator may require the Applicant to take corrective action;

(2) inspect certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project;

(3) inspect and review the project and to obtain information through documents or interviews with appropriate personnel to ensure that the Applicant is complying with the requirements of the covenants of the bond indenture and/or the master agreement;

(4) inspect accounting and financial records to ensure that the Applicant maintains debt service fund accounts and all other fund accounts related to the DWSRF debt in accordance with standards set forth by the Governmental Accounting Standards Board; and

(5) request the Applicant to determine the status of compliance with mitigation measures as required in the final environmental determination.

§371.91. Disallowance of Project Costs and Remedies for Noncompliance.

If the Applicant does not comply with applicable laws and rules relating to the project and to the financial assistance documents, the executive administrator may take any of the following actions:

(1) impose additional conditions to remedy the noncompliance;

(2) withhold releases from escrows or disbursements until the Applicant comes into compliance;

(3) refrain from closing on existing commitments;

(4) disallow all or part of the cost of a project expenditure that is not in compliance;

(5) allow a substitution of eligible cost activities for disallowed costs or require repayment of disallowed costs, at the discretion of the executive administrator; and

(6) take other remedial actions that may be legally available.

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

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) proposes to repeal 31 Texas Administrative Code (TAC) §§371.60 - 371.62, 371.70 - 371.74, and 371.80 - 371.89.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE PROPOSED REPEALS.

The TWDB proposes to repeal these sections of the rules because new rules 31 TAC §§371.60 - 371.63, 371.70 - 371.75, and 371.80 - 371.89 are being proposed elsewhere in this issue of the *Texas Register.*

SECTION BY SECTION DISCUSSION OF THE PROPOSED REPEALS

31 TAC §371.60, Engineering Feasibility Report

Section 371.60 is proposed for repeal due to addition of a new §371.60 outlining applicability of the subchapter on engineering review and approval. The new §371.60 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.61, Contract Documents: Review and Approval

Section 371.61 is proposed for repeal to replace it with the Engineering Feasibility Report rule previously numbered as 371.60. The new §371.61 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.62, Advertising and Awarding Construction Contracts

Section 371.62 is proposed for repeal to replace it with the Contract Documents: Review and Approval rule previously numbered as 371.61. The new §371.62 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.70, Financial Assistance Secured by Bonds or Other Authorized Securities

Section 371.70 is proposed for repeal due to addition of a new §371.70 outlining applicability of the subchapter on loan closing and availability of funds. The new §371.70 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.71, Financial Assistance Secured by Promissory Notes and Deeds of Trust

Section 371.71 is proposed for repeal to replace it with the Financial Assistance Secured by Bonds and Other Authorized Securities rule previously numbered as 371.70 The new §371.71 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.72, Disbursement of Funds

Section 371.72 is proposed for repeal to replace it with the Financial Assistance Secured by Promissory Notes and Deeds of Trust rule previously numbered as 371.71. The new §371.72 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.73, Remaining Unused Funds

Section 371.73 is proposed for repeal to replace it with the Disbursement of Funds rule previously numbered as 371.72. The new §371.73 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.74, Surcharge

Section 371.74 is proposed for repeal to replace it with the Remaining Unused Funds rule previously numbered as 371.73. The new §371.74 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.80, Inspection During Construction

Section 371.80 is proposed for repeal due to addition of a new §371.78 outlining applicability of the subchapter on construction and post-construction requirements. The new §371.70 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.81, Alteration During Construction

Section 371.81 is proposed for repeal to replace it with the Inspection During Construction rule previously numbered as 371.80. The new §371.81 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.82, Force Account

Section 371.82 is proposed for repeal to replace it with the Alterations During Construction rule previously numbered as 371.81. The new §371.82 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.83, As Built Plans

Section 371.83 is proposed for repeal to replace it with the Force Account rule previously numbered as 371.82. The new §371.83 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.84, Certificate of Approval and Project Completion

Section 371.84 is proposed for repeal to replace it with the As Built Plans rule previously numbered as 371.83. The new §371.84 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.85, Final Accounting

Section 371.85 is proposed for repeal to replace it with the Certificate of Approval and Project Completion rule previously numbered as 371.84. The new §371.85 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.86, Records Retention

Section 371.86 is proposed for repeal to replace it with the Final Accounting rule previously numbered as 371.85. The new §371.86 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.87, Release of Retainage

Section 371.87 is proposed for repeal to replace it with the Records Retention rule previously numbered as 371.86. The new §371.87 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.88, Responsibilities of Applicant

Section 371.88 is proposed for repeal to replace it with the Release of Retainage rule previously numbered as 371.87. The new §371.88 is proposed for adoption elsewhere in this issue of the *Texas Register.*

31 TAC §371.89, Authority of the Executive Administrator

Section 371.89 is proposed for repeal to replace it with the Responsibilities of Applicant rule previously numbered as 371.88. The new §371.89 is proposed for adoption elsewhere in this issue of the *Texas Register.*

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Rebecca Treviño, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments resulting from the proposed repeals. For the first five years these proposed repeals are in effect, there is no expected additional cost to state or local governments.

The repeal of these rules is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed repeals. These repeals are not expected to have any impact on state or local revenues. These repeals do not require any increase in expenditures for state or local governments as a result of administering the repeals. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these repeals.

Because these repeals will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these repeals are necessary to receive a source of federal funds and are necessary to comply with federal and state law.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Treviño also has determined that for each year of the first five years the proposed repeals are in effect, there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that they are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to reorganize the rules based on the addition of sections that implement new requirements in state and federal law within the current framework of the drinking water state revolving fund.

Even if the proposed repeals were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of

state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §§15.604, 15.605, and 16.093. Therefore, the proposed repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board 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 Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated the proposed repeals and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the repeals is to reorganize the rules based on the addition of sections that implement new requirements in state and federal law within the current framework of the drinking water state revolving fund. The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the proposed repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state and federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for the construction of water, wastewater, flood control, and other related projects.

Nevertheless, the board further evaluated the proposed repeals and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the proposed repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeal. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined that for the first five years the proposed repeals would be in effect, they will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The proposed repeals reorganize the rules based on the addition of sections that implement new requirements in state and federal law within the current framework of the drinking water state revolving fund.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Include reference to Chapter 371 in the subject line. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.*

SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§371.60 - 371.62

STATUTORY AUTHORITY

These repeals are proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

§371.60. Engineering Feasibility Report.
§371.61. Contract Documents: Review and Approval.
§371.62. Advertising and Awarding Construction Contracts.

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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Todd Chenoweth
General Counsel
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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.74

STATUTORY AUTHORITY

These repeals are proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

§371.70. Financial Assistance Secured by Bonds or Other Authorized Securities.
§371.71. Financial Assistance Secured by Promissory Notes and Deeds of Trust.
§371.72. Disbursement of Funds.
§371.73. Remaining Unused Funds.
§371.74. Surcharge.

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

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SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

31 TAC §§371.80 - 371.89

STATUTORY AUTHORITY

These repeals are proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

§371.80. Inspection During Construction.
§371.81. Alterations During Construction.
§371.82. Force Account.
§371.83. As Built Plans.
§371.84. Certificate of Approval and Project Completion.
§371.85. Final Accounting.
§371.86. Records Retention.
§371.87. Release of Retainage.
§371.88. Responsibilities of Applicant.
§371.89. Authority of the Executive Administrator.

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

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB") proposes adding new 31 Texas Administrative Code (TAC) §§375.72 and 375.111 and amending existing 31 TAC §§375.1, 375.16, 375.17, 375.31, 375.41, 375.43, 375.45, 375.60, 375.82, 375.91, 375.92, 375.94, 375.101 and 375.109, relating to the Clean Water State Revolving Fund.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED ADDITIONS AND AMENDMENTS.

The purpose of the additions and amendments is to implement legislative changes from House Bill 3339, 86th (R) Legislative Session and from America's Water Infrastructure Act of 2018 (AWIA), and to implement changes in program management, including addition of remedies for non-compliance. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE PROPOSED ADDITIONS AND AMENDMENTS

31 TAC §375.1 Definitions

Section 375.1 is amended to define the term "water conservation plan" as a plan in compliance with Texas Water Code §16.4021, as required by H.B. 3339, 86th (R) Legislative Session.

31 TAC §375.16 Fees for Financial Assistance

Section 375.16 is amended to clarify the origination fee.

31 TAC §375.17 Term of Financial Assistance

Section 375.17 is amended to remove mention of specific loan time periods and to provide the terms in the IUP.

31 TAC §375.31 Rating Process

Section 375.31 is amended to make emergency relief applicable to all disasters, not just natural disasters.

31 TAC §375.41 Timeliness of Application and Required Application Information

Section 375.41 is amended to add the requirement that a preliminary engineering feasibility report signed and sealed by a professional engineer be submitted as part of an application, and detailing the information to be included in the report.

31 TAC §375.43 Required Water Conservation Plan and Water Loss Audit

Section 375.43 is amended to require that the water conservation plan comply with Texas Water Code §16.4021, as enacted by H.B. 3339, 86th (R) Legislative Session, and to clarify that a requirement that a portion of assistance be used for water loss mitigation applies only to Applicants providing potable water.

31 TAC §375.45 Multi-Year Commitment

Section 375.45 is amended to tie the terms to the IUP, increasing flexibility for financial assistance recipients.

31 TAC §375.60 Definitions

Section 375.60 is amended to define the term "emergency relief project".

31 TAC §375.72 Emergency Relief Project Procedures

Section 375.72 is added to outline emergency relief project procedures identical to those already contained in rules for the Drinking Water State Revolving Fund.

31 TAC §375.82 Contract Documents: Review and Approval

Section 375.82 is amended to include a requirement that Applicants submit an electronic copy of applications and reduces the

number of paper copies required unless the Applicant is directed otherwise.

31 TAC §375.91 Financial Assistance Secured by Bonds or Other Authorized Securities

Section 375.91 is amended to add requirements for closing financial assistance projects consisting of 100 percent principal forgiveness.

31 TAC §375.92 Financial Assistance Secured by Promissory Notes and Deeds of Trust

Section 375.92 is amended to clarify language and conform with rules for the Drinking Water State Revolving Fund.

31 TAC §375.94 Remaining Unused Funds

Section 375.94 is amended to clarify the disposition of remaining project funds.

31 TAC §375.101 Inspection During Construction

Section 375.101 is amended to change the term "inspection" to "site visits" and to add the requirement to review compliance with EPA's American Iron and Steel requirements.

31 TAC §375.109 Responsibilities of Applicant

Section 375.109 is amended to change the term "water conservation program" to "water conservation plan," the term used in Texas Water Code §16.4021.

31 TAC §375.111 Disallowance of Project Costs and Remedies for Noncompliance

Section 375.111 is added to provide remedies for noncompliance with project rules and financial assistance documents.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Rebecca Treviño, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments resulting from the proposed rulemaking. For the first five years these rules and amendments are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state and local governments because the proposed additions and amendments implement statutory requirements and clarify the language in the rules. These rules are not expected to have any impact on state or local revenues. The rules and their administration will not require any increase in expenditures for state or local governments. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are necessary to receive a source of federal funds and are necessary to comply with federal and state law.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Treviño also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no additional cost to the public, and the public will benefit from the rulemaking as it is intended to comply with state law and implement changes in program management, including addition of remedies for non-compliance.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years they are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities from enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement new requirements in state and federal law and changes in program management within the current framework of the clean water state revolving fund.

Even if the proposed amendments and rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §§15.604, 15.605, and 16.093. Therefore, the proposed amendments do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board 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 Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated the proposed rules and amendments and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the rules is to implement new requirements in state and federal law and changes in program management within the current framework of the clean water state revolving fund.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state and federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for the construction of water, wastewater, flood control, and other related projects.

Nevertheless, the board further evaluated the proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require compliance with state and federal laws regarding financial assistance under the state revolving funds without burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined that for the first five years the proposed rules would be in effect, the proposed rules will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy. The proposed rules implement new requirements in state and federal law and changes in program management within the current framework of the drinking water state revolving fund.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Include reference to Chapter 375 in the subject line. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §375.1

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.1. Definitions.

The following words and terms[~~, when used in this chapter, shall~~] have the following meanings when used in this chapter, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here [~~shall~~] have the meanings provided by Chapter 15.

(1) - (68) (No change.)

(69) Water conservation plan--A plan that complies with the requirements of Texas Water Code Section 16.4021 [~~report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area~~].

[~~(70) Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.~~]

(70) [~~(71)~~] Water quality management plan--A plan prepared and updated annually by the State and approved by the Environmental Protection Agency that determines the nature, extent, and causes of water quality problems in various areas of the State and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

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

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Todd Chenoweth
General Counsel
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For further information, please call: (512) 463-7686

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §375.16, §375.17

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.16. Fees for Financial Assistance.

(a) General. The Applicant will be assessed charges for the purpose of recovering administrative costs of all projects receiving CWSRF financial assistance. However, no fees or costs will [~~shall~~] be assessed on the portion of the project that receives principal forgiveness as detailed in the IUP.

(b) Origination fee. An administrative fee not to exceed 1.75 [~~1.85~~] percent of the project costs will be assessed [~~,~~] as a one-time non-refundable charge. Project costs on [~~upon~~] which the fee will be assessed do not include the origination fee or those project costs that are funded through principal forgiveness. The fee is due and payable at the time of loan closing and may be financed as a part of the financial assistance.

§375.17. Term of Financial Assistance.

The Board may offer financial assistance in accordance with the Act and the IUP under which the project received funding.

[~~(a) The Board may offer financial assistance up to 30 years for the planning, acquisition, design and/or construction of a project, in accordance with the Act and the IUP under which the project received funding.~~]

[~~(b) Notwithstanding the terms in subsection (a) of this section, the term of financial assistance may not exceed the useful life of an eligible project, in accordance with the Act.~~]

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

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For further information, please call: (512) 463-7686

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §375.31

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.31. Rating Process.

(a) - (e) (No change.)

(f) Emergency relief. Projects that are affected by [~~natural~~] disasters and according to the following requirements:

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

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

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§375.41, 375.43, 375.45

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.41. Timeliness of Application and Required Application Information.

(a) (No change.)

(b) Required application information. For eligible public Applicants, an application shall be in the form and number of copies prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the Board, the Applicant shall provide the following documentation:

(1) - (11) (No change.)

(12) Preliminary Engineering Feasibility Report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, must provide:

(A) a description and purpose of the project;

(B) the entities to be served and current and future population;

(C) the cost of the project;

(D) a description of alternatives considered and reasons for the selection of the project proposed;

(E) sufficient information to evaluate the engineering feasibility of the project;

(F) maps and drawings as necessary to locate and describe the project area; and

(G) any other information the executive administrator determines is necessary to evaluate the project.

(c) (No change.)

§375.43. Required Water Conservation Plan and Water Loss Audit.

(a) Water Conservation Plan. An Applicant shall submit a water conservation plan prepared in accordance with Texas Water Code Section 16.4021 [~~§363.15 of this title (relating to Required Water Conservation Plan)~~].

(b) (No change.)

(c) If an Applicant that is a retail public utility providing potable water has a water loss that [~~If a retail public utility's total water loss~~] meets or exceeds the threshold for that utility in accordance with §358.6 of this title, the retail public utility must use a portion of any new financial assistance, or any other financial assistance provided by

the Board, for project [~~projects~~] costs that are eligible under the Act and the applicable IUP to mitigate the utility's water loss. However, at the request of a retail public utility, the Board may waive this requirement in accordance with §358.6 of this title.

§375.45. Multi-year Commitments.

(a) Commitment periods may be set for a period of up to five years. The minimum interest rate reduction for [~~the~~] multi-year commitments will be established for the five-year [~~five year~~] period based on the interest rate reduction prescribed in the IUP for the first year's commitment.

(b) This option is only available for projects as described in the IUP. [~~that do not receive principal forgiveness based on the affordability criteria. However, the entity receiving a multi-year commitment may receive principal forgiveness for the other eligible options, such as principal forgiveness for green projects, for the amount of funds committed for the initial year.~~]

(c) (No change.)

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

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §375.60, §375.72

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.60. Definitions.

Unless specifically defined differently within this subchapter, the following terms and acronyms, used in this subchapter, mean:

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

(3) Emergency Relief Project--An infrastructure construction project that provides relief to an entity experiencing an emergency condition or incident that causes an imminent peril to public health, safety, environment, or welfare, including natural disasters and any other emergency condition as described in an IUP.

(4) [~~(3)~~] Environmental Assessment--A public document prepared by the executive administrator for projects that may result in adverse environmental impacts where [~~and~~] the significance of those impacts is not known. The Environmental Assessment, based primarily on the Environmental Information Document, must provide sufficient evidence and analysis to determine whether to prepare a Finding of No Significant Impact or an Environmental Impact Statement.

(5) [~~(4)~~] Environmental Impact Statement (EIS)--A detailed written statement prepared by a third-party contractor, in close coordination with the executive administrator, that analyzes environmental impacts of project alternatives for projects with significant adverse impacts on the quality of the human environment. An EIS is required for projects that do not qualify for a Finding of No Significant Impact. An EIS provides the most comprehensive and detailed information about potential environmental impacts and mitigation required to comply with the NEPA. It is the basis for the Record of Decision issued by the Board.

(6) [~~(5)~~] Environmental Information Document (EID)--A written analysis prepared by the Applicant that provides sufficient information, including appropriate regulatory agency correspondence and public participation documentation, for the executive administrator to undertake an environmental review and determine if the project qualifies for a Finding of No Significant Impact or if an Environmental Impact Statement will be required. An EID is not always necessary to determine if the project will require preparation of an EIS.

(7) [~~(6)~~] Federal Environmental Cross-cutters--Federal environmental statutes, laws and Executive Orders that apply to projects and activities with a federal nexus, including the receipt of federal financial assistance.

(8) [~~(7)~~] Finding of No Significant Impact (FONSI)--An environmental finding issued by the Board when the environmental assessment prepared for the project supports the determination that the project will not have a significant adverse effect on the human environment and therefore, does not require the preparation of an environmental impact statement.

(9) [~~(8)~~] Human environment--The natural and physical environment and the relationship of people with that environment.

(10) [~~(9)~~] Indian tribes--Federally recognized Indian tribes.

(11) [~~(10)~~] Mitigation--

(A) avoiding the impact altogether by not taking a certain action or parts of an action;

(B) minimizing the impact [~~impacts~~] by limiting the degree or magnitude of the action and its implementation;

(C) - (E) (No change.)

(12) [~~(11)~~] NEPA--The Federal National Environmental Policy Act, 42 U.S.C. §4321 [~~§§4321~~]et seq.

(13) [~~(12)~~] Record of Decision (ROD)--An environmental finding issued by the Board that identifies the selected project alternative, presents the basis for the decision, identifies all the alternatives considered, specifies the environmentally preferable alternative, and provides information on the adopted means to mitigate for environmental impacts. The ROD is based on the conclusions of the EIS.

(14) [~~(13)~~]Statement of Finding (SOF)--An environmental finding issued by the Board to correct, clarify, modify, or adopt a previous environmental finding[,] issued by the Board or other agency.

§375.72. Emergency Relief Project Procedures.

(a) If an Applicant requests funding for an emergency relief project, the executive administrator shall review all information relevant to the emergency, proposed project, status of environmental review of the proposed project, known issues with the natural or cultural environment of the project area, and availability of funding.

(b) If an emergency condition described in §375.60(3) of this title (relating to Definitions) is present, the Board may authorize funding for the emergency relief project, subject to availability of funds,

without full preparation or public review of NEPA review documentation (including a CE finding, EA, or EIS) if the executive administrator determines that:

(1) delaying commencement of project construction during the period it would take to prepare, review, and circulate NEPA documentation would increase the imminent peril to the public health, safety, environment, or welfare; and

(2) consultations required by the Endangered Species Act and National Historic Preservation Act have been completed.

(c) Special conditions appropriate to minimize any potential for adverse impact due to abbreviated or expedited review may be required.

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

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Todd Chenoweth
General Counsel
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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §375.82

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.82. Contract Documents: Review and Approval.

(a) Contract documents include the documents that form the construction contracts and the documents that form the contracts for alternative methods of project delivery, which may include the construction phase or other phases of the project.

(b) Unless otherwise specified by the executive administrator, an [~~An~~] Applicant must [~~shall~~] submit at least one paper and one electronic copy [~~three copies~~] of proposed contract documents, including the engineering plans and specifications, which must [~~shall~~] be as detailed as would be required for submission to contractors bidding on the work. The Applicant must [~~shall~~] provide the executive administrator with all contract documents proposed for bid advertising. The executive administrator will [~~shall~~] review contract documents:

(1) - (5) (No change.)

(c) (No change.)

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

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§375.91, 375.92, 375.94

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.91. Financial Assistance Secured by Bonds or Other Authorized Securities.

(a) Applicability and required documents. This section applies to closings for financial assistance with entities issuing bonds or other authorized securities. The following documents and conditions are required for closing financial assistance secured by bonds or other authorized securities:

(1) (No change.)

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board that is acceptable to the executive administrator. The ordinance or resolution must [~~shall~~] have sections provided as follows:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing, then an escrow account separate from all other accounts and funds must be created [~~shall be created that shall be separate from all other accounts and funds,~~] as follows:

(i) the account must [~~shall~~] be maintained by an escrow agent as defined in §375.1 of this title (relating to Definitions);

(ii) funds cannot [~~shall not~~] be released from the escrow without prior written approval from the executive administrator, who shall issue written authorization for release of the funds;

(iii) escrow account statements must be provided to the executive administrator upon request [~~of the executive administrator, escrow account statements shall be provided to the executive administrator~~];

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account must [~~shall~~] be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code[~~,~~] Chapter 2256; and

(v) the escrow account must [~~shall~~] be adequately collateralized in a manner sufficient to protect the Board's interest in the project and in compliance with the Public Funds Collateral Act, Texas Government Code[~~,~~] Chapter 2257;

(B) [~~that~~] the Applicant shall fix and maintain rates[~~,~~] in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) [~~that~~] a construction account must [~~shall~~] be created and must [~~which shall~~] be kept separate from all other accounts and funds of the Applicant;

(D) [~~that~~] bonds must [~~shall~~] be closed in book-entry-only form;

(E) the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant is required;

(F) [~~that~~] the payment of all DTC closing fees assessed by the Board's custodian bank must be directed to the Board's custodian bank by the Applicant;

(G) the Applicant must provide evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(H) [~~that~~] all payments, including the origination fee, must be [~~are~~] made to the Board via wire transfer at no cost to the Board;

(I) [~~that~~] insurance coverage must be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(J) [~~that~~] the Applicant, or an obligated person for whom financial or operating data is presented, [~~will undertake,~~] either individually or in combination with other issuers of the Applicant's obligations or obligated persons, must undertake in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule. Such [~~, such~~] continuing disclosure undertaking is [~~being~~] for the benefit of the Board and the beneficial owner of the political subdivision's obligations[~~,~~] if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution required in subsection (a)(2) of this section must [~~shall~~] also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds, or other relevant requirements regarding the securities held by the Board;

(K) [~~the maintenance of~~] current, accurate, and complete records and accounts must be maintained in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(L) [~~that~~] the Applicant must [~~shall~~] annually submit an audit[~~,~~] prepared by a certified public accountant in accordance with generally accepted auditing standards;

(M) [~~that~~] the Applicant must [~~shall~~] submit a final accounting within 60 days of project [~~the~~] completion [~~of the project~~].

(N) [~~that~~] the Applicant must [~~shall~~] document the adoption and implementation of an approved water conservation plan [~~program~~] for the duration of the financial assistance;

(O) the Applicant must [~~Applicant's agreement to~~] comply with special environmental conditions specified in the Board's environmental finding as well as with any applicable Board laws or rules relating to use of the financial assistance;

(P) [~~that~~] the Applicant must [~~shall~~] establish a dedicated source of revenue for repayment of the financial assistance;

(Q) [~~that~~] interest payments must [~~shall~~] commence no later than one year after the date of closing;

(R) [~~that~~] annual principal payments must [~~will~~] commence no later than one year after completion of project construction; and

(S) (No change.)

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

(6) a Private Placement Memorandum containing a detailed description of the issuance of debt to be sold to the Board. The Applicant must [~~shall~~] submit a draft Private Placement Memorandum at least 30 days before [~~prior to the~~] closing of the financial assistance; a final electronic version of the Memorandum must [~~shall~~] be submitted no later than seven days before closing;

(7) when any portion of the financial assistance is to be held in an escrow account, the Applicant must [~~shall~~] execute an escrow agreement[~~,~~] approved as to form and substance by the executive administrator;

(8) if applicable, a home rule municipality pursuant to Texas Local Government Code Chapter 104 must [~~, Local Government Code, shall~~] execute a Certification of Trust as defined in §375.1 of this title; and

(9) (No change.)

(b) Certified bond transcript. Within sixty (60) days of closing the financial assistance, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board which must [~~shall~~] contain those instruments normally furnished by a purchaser of debt.

(c) (No change.)

(d) Financial assistance consisting of 100 percent principal forgiveness. Notwithstanding subsection (a) of this section, the following documents are required for closing financial assistance consisting of 100 percent principal forgiveness:

(1) evidence that applicable requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) an executed principal forgiveness agreement adopted by the governing body that is acceptable to the executive administrator. The agreement must have the following sections:

(A) if financial assistance proceeds are to be deposited into an escrow account at the time of closing then an escrow account separate from all other accounts and funds must be created, as follows:

(i) the account must be maintained by an escrow agent as defined in §375.1 of this title;

(ii) funds cannot be released from the escrow account without prior written approval from the executive administrator, who shall issue written authorization for the release of funds;

(iii) escrow account statements must be provided to the executive administrator upon request;

(iv) the investment of any financial assistance proceeds deposited into an approved escrow account must be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code Chapter 2256; and

(v) the escrow account must be adequately collateralized in a manner sufficient to protect the Board's interest in the project

and that complies with the Public Funds Collateral Act, Texas Government Code Chapter 2257;

(B) the Applicant must fix and maintain rates in accordance with state law, and collect charges to provide adequate operation and maintenance of the project;

(C) a construction account separate from all other accounts and funds of the Applicant must be created;

(D) insurance coverage must be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(E) the Applicant, or an obligated person for whom financial or operating data is presented, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, must undertake in a written agreement or contract to comply with requirements for continuing disclosure as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule. Such continuing disclosure undertaking is for the benefit of the Board and the beneficial owner of the political subdivision's obligations if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution required in subsection (a)(2) of this section must also contain any other requirements of the SEC or the IRS relating to arbitrage, private activity bonds, or other relevant requirements regarding the securities held by the Board;

(F) current, accurate, and complete records and accounts must be maintained in accordance with generally accepted accounting principles to demonstrate compliance with requirements in the financial assistance documents;

(G) the Applicant must annually submit an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;

(H) the Applicant must submit a final accounting within 60 days of the completion of the project;

(I) the Applicant must document the adoption and implementation of an approved water conservation plan for the duration of the financial assistance;

(J) the Applicant must comply with special environmental conditions specified in the Board's environmental finding as well as with any applicable Board laws or rules relating to use of the financial assistance;

(3) assurances that the Applicant will comply with any special conditions specified by the Board's environmental finding;

(4) if the project will result in the development of surface water or groundwater resources, the Applicant must provide information showing that it has the legal right to use the water that the project will provide. Upon receipt of the information, the executive administrator will prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights to the water that the project will provide prior to any release of funds for planning, land acquisition, and design activities. Prior to the release of funds for construction, a written water rights certification will be prepared by the executive administrator. The certification will be based upon the Applicant's information showing the necessary water rights have been acquired;

(5) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(6) when any portion of the financial assistance is to be held in an escrow account, the Applicant must execute an escrow agreement, approved as to form and substance by the executive administrator;

(7) if applicable, a home rule municipality pursuant to Texas Local Government Code Chapter 104 must execute a Certification of Trust as defined in §375.1 of this title; and

(8) any additional information specified in writing by the executive administrator.

§375.92. Financial Assistance Secured by Promissory Notes and Deeds of Trust.

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

(c) Documents required for closing. The [~~executive administrator shall ensure that the~~] following documents and conditions are required for [~~have been submitted prior to~~] closing financial assistance secured by promissory notes and deeds of trust:

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

(3) a Deed of Trust and Security Agreement that must [~~shall~~] contain a first mortgage lien evidenced by a deed of trust on all the real and personal property of the water system provided; however, this is not needed if the financial assistance consists of 100 percent principal forgiveness;

(4) an owner's title insurance policy for the benefit of the Board covering all the real property identified in the deed of trust provided; however, this is not needed if the financial assistance consists of 100 percent principal forgiveness;

(5) - (6) (No change.)

(7) a legal opinion from Applicant's counsel that provides:

(A) - (D) (No change.)

(E) a statement addressing [~~relating to~~] any other issues deemed relevant by the executive administrator.

(8) - (9) (No change.)

(10) evidence that the Applicant has established [~~shall establish~~] a dedicated source of revenue for repayment of the financial assistance;

(11) - (14) (No change.)

(d) if [~~in the event that~~] financial assistance proceeds are to be deposited into an escrow account at the time of closing [~~the financial assistance, then~~] an escrow account separate from all other accounts and funds must be created, [~~shall be created that shall be separate from all other accounts and funds,~~] as follows:

(1) the account must [~~shall~~] be maintained by an escrow agent as defined in §375.1 of this title (relating to Definitions);

(2) funds cannot [~~shall not~~] be released from the escrow account without prior written approval of the executive administrator, who shall issue written authorization for the release of funds;

(3) [~~upon request of the executive administrator,~~] escrow account statements must [~~shall~~] be provided on a monthly basis to the executive administrator upon request;

(4) the investment of any financial assistance proceeds deposited into an approved escrow account must [~~, shall~~] be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code[,] Chapter 2256; and

(5) the escrow account must [~~shall~~] be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code[~~,~~] Chapter 2257.

(e) Construction account. A construction account must [~~shall~~] be created and must [~~that shall~~] be kept separate from all other accounts and funds of the Applicant.

(f) (No change.)

§375.94. Remaining Unused Funds.

(a) (No change.)

(b) If there are no enhancements authorized, the Applicant must [~~shall be required to~~] submit a final accounting and disposition of any unused funds as specified in §375.106 (relating to Final Accounting).

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 February 14, 2020.

TRD-202000652
Todd Chenoweth
General Counsel
Texas Water Development Board
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 463-7686

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SUBCHAPTER H. CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS

31 TAC §§375.101, 375.109, 375.111

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16

§375.101. Inspection During Construction.

(a) Applicant's inspection. The Applicant shall provide for the adequate qualified inspection of the project under the supervision of a registered engineer and shall require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans, specifications, and other engineering design or permit documents, approved alterations or changes, and in accordance with the requirements in the environmental finding applicable to the project, and using [~~to the~~] sound engineering principles and construction practices.

(b) Board's site visits [~~inspection~~]. The executive administrator may conduct site visits regarding [~~, at his discretion, inspect~~] the construction and materials of any project at any time. The purpose of the site visits [~~inspection~~] is to determine whether the contractor is substantially complying with the approved engineering plans of the project and is constructing the project in accordance with the approved project schedule. The site visits do [~~inspection by the Board does~~] not subject the state to any civil liability.

(c) Scope of inspections. Inspections may include, but are not limited to:

(1) (No change.)

(2) review of documents related to the construction projects, including but not limited to:

(A) payroll, daily attendance, and any other records relating to person employed during the construction, and records relating to the Davis-Bacon [~~Davis Bacon~~] Act and related federal laws and regulations relating to prevailing wage rates;

(B) - (D) (No change.)

(E) change orders and supporting documents; [~~and~~]

(F) compliance with EPA's American Iron and Steel requirements; and

(G) [~~F~~] review of any other documents to ensure compliance with the terms of the approved contract documents and the Board's rules.

(d) The executive administrator may document issues to ensure compliance with applicable laws, rules, and contract documents, and may recommend to the owner that certain corrective actions occur to ensure compliance with laws, rules, and approved plans and specifications.

(e) The Applicant must [~~shall~~] provide the executive administrator with a response to any documented [~~the~~] issues relating to compliance.

§375.109. Responsibilities of Applicant.

After the satisfactory completion of the project, the Applicant remains responsible for compliance with applicable laws and rules relating to the project and to the financial assistance documents required by the Board resolution or the bond ordinance or resolution, including but not limited to submission of an annual audit, implementation and enforcement of the approved water conservation plan [~~program,~~] and other assurances made to the Board. The Board has a continuing interest in the State's investment and therefore, the Applicant will [~~shall~~] be subject to the continuing authority of the Board and the executive administrator through final payment of the financial assistance.

§375.111. Disallowance of Project Costs and Remedies for Noncompliance.

If the Applicant does not comply with applicable laws and rules relating to the project and to the financial assistance documents, the executive administrator may take any of the following actions:

(1) impose additional conditions to remedy the noncompliance;

(2) withhold releases from escrows or disbursements until the Applicant comes into compliance;

(3) refrain from closing on existing commitments;

(4) disallow all or part of the cost of a project expenditure that is not in compliance;

(5) allow a substitution of eligible cost activities for disallowed costs or require repayment of disallowed costs, at the discretion of the executive administrator; and

(6) take other remedial actions that may be legally available.

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 February 14, 2020.

TRD-202000654
Todd Chenoweth
General Counsel
Texas Water Development Board
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts proposes amendments to §3.101, concerning Cigarette Tax and Stamping Activities. The amendments implement Senate Bill 21 and House Bill 4614, 86th Legislature, 2019, effective September 1, 2019, that provide the basis for updates to the section by increasing the legal age for a person importing cigarettes in small quantities and modernizing relevant definitions and first sale language.

The comptroller adds new subsection (a) to include definitions found under Tax Code, §154.001 (Definitions), for terms used but not previously defined in this section. The comptroller adds new paragraphs (1) through (10) to define the terms "bonded agent," "cigarette," "distributor," "export warehouse," "first sale," "individual package of cigarettes," "manufacturer," "retailer," "stamp," and "wholesaler," using the meanings assigned by Tax Code, §154.001.

The comptroller reletters subsequent subsections accordingly.

The comptroller amends subsection (b)(1) to remove language that stated that cigarettes must be received in the state in order to constitute a first sale and relocates language regarding cigarette stamping requirements. Subsection (b)(2)(A) is amended for readability.

The comptroller adds new subsection (c) to address permitted distributors' tax liabilities.

The comptroller amends subsections (d) and (e) to make grammatical changes.

The comptroller amends subsection (i) to add the Texas Alcoholic Beverage Commission's (TABC) tax rate for a pack of cigarettes that is imported into this state and makes grammatical changes.

The comptroller reorganizes relettered subsection (l) to improve readability and change all references to the legal age from 18 to 21 for a person who imports cigarettes in small quantities. The comptroller amends the title of the subsection to better reflect the content of the subsection. In paragraph (1), the comptroller replaces existing language concerning importation of 200 or fewer cigarettes with the requirement that a person must be 21 years of age to import small quantities of cigarettes or meet one of the exceptions provided by SB 21. The comptroller replaces existing provisions related to TABC tax collection at ports of entry with language regarding importation of 200 or fewer cigarettes from another state or an Indian reservation under the jurisdiction of the U.S. government. In paragraph (3), the comptroller deletes the age requirement now found in paragraph (1) and adds that the TABC will collect at ports of entry the cigarette tax from each person who imports and personally transports more than 200 cigarettes into the state from another country. The comptroller amends paragraph (4) to include the exceptions to the age requirement found in SB 21 and to omit a now incorrect cross reference.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), 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), and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §§154.001 (Definitions), 154.022 (Tax Imposed on First Sale of Cigarettes), 154.0225 (Liability of Permitted distributors), 154.024 (Importation of Small Quantities), 154.101 (Permits), 154.1015 (Sales; Permit Holders and Nonpermit Holders) and Health & Safety Code §161.252 (Possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products by minors prohibited).

§3.101. Cigarette Tax and Stamping Activities.

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

(1) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(2) Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(3) Distributor--A person who:

(A) is authorized to purchase for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(4) Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(5) First sale--Except as otherwise provided in this section:

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which:

(i) includes the sale of cigarettes by a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and includes the sale of cigarettes by a manufacturer in this state who transfers the cigarettes in this state; and

(ii) does not include the sale of cigarettes by a manufacturer outside this state to a distributor in this state; and does not include the transfer of cigarettes from a manufacturer outside this state to a bonded agent in this state;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(6) Individual package of cigarettes--A package that contains at least 20 cigarettes.

(7) Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(8) Retailer--A person who engages in the business of selling cigarettes to consumers and includes the owner of a cigarette vending machine.

(9) Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by this chapter;

(C) is consecutively numbered and uniquely identifiable as a Texas tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(10) Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale but who is not a distributor.

(b) [~~(a)~~] Imposition of tax.

(1) A tax is imposed on a person who uses or disposes of cigarettes in this state. The tax rate is $70.50 per thousand on cigarettes weighing three pounds or less per thousand plus $2.10 per thousand on cigarettes weighing more than three pounds per thousand. The tax becomes due and payable when a person [~~in this state~~] receives cigarettes to make a first sale. A person who pays the tax shall securely affix a stamp to each individual package of cigarettes to show payment of the tax. The ultimate consumer or user of cigarettes in this state bears the impact of the tax; and, if another person pays the tax, the amount of the tax is added to the price to the ultimate consumer or user. [~~A person who pays the tax shall securely affix a stamp to each individual package of cigarettes to show payment of the tax.~~] Absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(2) Cigarettes are exempt from the imposition of tax and the stamping requirements described in this section if the cigarettes are:

(A) contained in a package labeled with "Experimental Use Only," "Reference Cigarettes," or other similar wording indicating that the manufacturer intends for the product to be used exclusively for experimental purposes in compliance with Experimental Purposes, 27 C.F.R. §40.232[~~Code of Federal Regulations Section 40.232~~] (2002 [~~Experimental Purposes~~]);

(B) sold directly by a manufacturer to a research facility in this state, including:

(i) a laboratory, hospital, medical center, college, or university; or

(ii) a facility designated as a Tobacco Center of Regulatory Science by the National Institutes of Health;

(C) used by the research facility exclusively for experimental purposes; and

(D) not resold by the research facility.

(c) Liability of a permitted distributor. A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax.

(d) [~~(b)~~] Cigarette tax stamp meters. Cigarette distributors cannot [~~are not authorized to~~] use stamp metering machines as evidence of payment of the cigarette tax.

(e) [~~(c)~~] Cigarette tax stamp credits.

(1) Allowance of credit for cigarette tax stamps. The comptroller may authorize credit for [~~on~~]:

(A) stamps that are affixed to cigarette packages that have been damaged or are unfit for sale and have been returned to the manufacturer in accordance with Tax Code, §154.306 (Exchange of Stamps);

(B) stamps that have been destroyed by vandalism, fire, flood, or other natural disasters. The distributor must present evidence that such stamps were purchased by the distributor and were subsequently destroyed by such natural disaster;

(C) stamps that have been erroneously affixed to cigarette carton flaps rather than the cigarette packages. The distributor must submit the stamped carton flaps to the comptroller in order to obtain credit. The comptroller will issue an authorization for refund of the tax with disallowance of the stamping discount;

(D) stamps used to restamp cigarette packages provided that the original tax stamps were of an illegible quality and the restamp-

ing is required by the comptroller's office. There is no stamping allowance for restamped cigarettes; or

(E) stamps that have been torn or otherwise damaged by a stamping machine. The distributor must submit the damaged stamps to the comptroller in order to obtain credit. The comptroller will notify the distributor of the amount of stamp credit authorized.

(2) Disallowance of credit for cigarette tax stamps. The comptroller will not authorize credit for stamps lost due to theft, negligence, or any unaccountable loss or for stamps that have been affixed two or more times to the same package of cigarettes resulting in double stamping.

(f) [~~(d)~~] Cigarette tax stamp payments. All persons who purchase cigarette tax stamps from the comptroller shall transfer payments by electronic funds transfer.

(g) [~~(e)~~] Evidence of return of cigarettes unfit for use. A distributor who requests replacement of cigarette tax stamps affixed to cigarettes that have been returned to the manufacturer must submit the following documentation to the comptroller:

(1) a credit memorandum from the manufacturer to whom the cigarettes were returned, verifying the number of cigarettes returned for credit;

(2) an affidavit from the manufacturer confirming that the tax stamps affixed to the cigarettes listed in the memorandum have been destroyed and listing the number, denomination, and the value of such stamps; and

(3) an affidavit from the distributor stating that the distributor returned the number of cigarettes listed in the manufacturer's credit memorandum and that the number, denomination, and the value of state cigarette tax stamps shown in the manufacturer's affidavit were affixed to the cigarettes returned.

(h) [~~(f)~~] Delivery of unstamped cigarettes to instrumentalities of the United States government.

(1) Distributors may use their own vehicles to deliver previously invoiced quantities of unstamped cigarettes to instrumentalities of the United States government. These tax-free cigarettes must be packaged in a manner that prevents the unstamped cigarettes from commingling with any other cigarettes in the distributor's vehicle.

(2) Each sale of unstamped cigarettes by a distributor to an instrumentality of the United States government shall be supported by a separate sales invoice and a properly completed federal exemption certificate. Sales invoices must be numbered and dated and must show the name of the seller, name of the purchaser, and the destination.

(i) [~~(g)~~] Generation and affixing of cigarette tax stamps by the Texas Alcoholic Beverage Commission (TABC).

(1) The comptroller, by interagency cooperation contract, may authorize the TABC to generate a cigarette tax stamp using the TABC's Port of Entry Tax Collection System [~~(POETCS)~~] and to affix the cigarette tax stamp to cigarette packages for the purpose of collecting the cigarette tax at ports of entry into the state.

(2) The TABC imposes a rate of $1.50 per pack for a conventional package of 20 cigarettes.

(3) [~~(2)~~] Payment for the cigarette tax stamps sold will be made by that agency according to the terms and conditions stipulated in the interagency cooperation contract between the comptroller and the TABC.

(j) [~~(h)~~] Affixing of cigarette tax stamps by TABC agents. Cigarette tax stamps affixed by agents of the TABC must be affixed to the cellophane wrapper on the bottom of each individual package of cigarettes.

(k) [~~(i)~~] Disposition of cigarettes seized by TABC agents.

(1) TABC agents shall seize all cigarettes for which the holder refuses to pay the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax).

(2) Cigarettes seized shall be released to agents of the comptroller for ultimate disposition.

(l) [~~(j)~~] Importation of cigarettes for personal use [~~200 or fewer cigarettes~~].

(1) Only a person 21 years of age or older, a person who is at least 18 and in the United States military or State military forces, or a person who was born on or before August 31, 2001, may import and personally transport cigarettes into this state. [~~A person 18 years of age or older, or a person younger than 18 years when the individual possesses the cigarettes in the presence of an adult parent, a guardian, or a spouse of the individual, who imports and personally transports 200 or fewer cigarettes into this state from another state, for personal use and not for sale is not required to pay the tax imposed by Tax Code, §154.021.~~]

(2) A person who imports and personally transports 200 or fewer cigarettes into this state from another state or an Indian reservation under the jurisdiction of the U.S. government, for personal use and not for sale, is not required to pay the tax imposed by Tax Code, §154.021. [~~TABC employees shall collect the tax imposed by Tax Code, §154.021, at ports of entry from each person who imports and personally transports more than 200 cigarettes into this state from another state and who is at least 18 years of age or who is younger than 18 and possesses the cigarettes in the presence of an adult parent, a guardian, or a spouse of the individual.~~]

(3) TABC employees shall collect the tax imposed by Tax Code, §154.021, at ports of entry from each person who imports and personally transports more than 200 cigarettes into this state from another country. [~~A person younger than 18 years of age may not import and personally transport cigarettes of any quantity into this state, except in the presence of an adult parent, a guardian, or a spouse of the individual.~~]

(4) TABC employees shall seize at ports of entry all cigarettes in the possession of a person younger than 21 [~~18~~] years of age, unless the person is at least 18 and in the United States military or State military forces, or was born on or before August 31, 2001 [~~except in situations where paragraph (3) of this subsection applies~~].

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 February 10, 2020.

TRD-202000554
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 10. IGNITION INTERLOCK DEVICE

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§10.4 - 10.6

The Texas Department of Public Safety (the department) proposes amendments to §10.4 and new §10.5 and §10.6, concerning General Provisions. These rule changes are necessary to implement Senate Bill 616, 86th Legislative Session. Senate Bill 616 authorizes the department to obtain fingerprints and to access and use criminal history record information that relates to those who hold or apply for authorization to act as vendors of ignition interlock devices. This authority requires the adoption of rules relating to disqualifying criminal offenses and the procedures for appeal of licensing actions based on criminal history determinations. Senate Bill 616 also requires adoption of procedures for the informal resolution of complaints against ignition interlock vendors.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be enhanced public safety through criminal history background checks, and greater efficiency in the administrative oversight of ignition interlock vendors through the informal resolution of complaints.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476 which authorizes the department to adopt rules to administer the program; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including the Ignition Interlock Device program.

Texas Government Code, §411.004(3); Texas Transportation Code, §521.2476; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, are affected by this proposal.

§10.4. Informal Hearing; Settlement Conference [~~Hearings~~].

(a) A person who receives notice of the department's intention to deny an application for device approval or for vendor authorization, to suspend or revoke a vendor authorization, or to impose an administrative fine, may appeal the decision by submitting a request to appeal by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Ignition Interlock Device Program website, within thirty (30) calendar days after receipt of notice of the department's proposed action. If a timely written request to appeal is not submitted, the right to an informal hearing or settlement conference, as applicable, and to a hearing before the State Office of Administrative Hearings, is waived, and the proposed action becomes final [~~A request for a hearing must be submitted in writing (by mail, facsimile, or electronic mail) within 30 calendar days of the receipt of the Notice of Denial or Revocation~~].

(b) If the action is based on the person's criminal history, an informal, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the proposed action, or issue a written statement of findings to the respondent either upholding or modifying the original proposed action [~~Hearings will be conducted before the State Office of Administrative Hearings, pursuant to Texas Government Code, Chapter 2001~~].

(c) If the proposed action is based on an administrative violation, or concerns the denial of an application for device approval, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone, by agreement of the parties. Following the settlement conference, the parties will execute an agreed order, or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings resulting from the informal hearing, or its determination following a settlement conference, may be appealed as provided in §10.5 of this title (relating to Hearing Before the State Office of Administrative Hearings). If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

§10.5. Hearing Before the State Office of Administrative Hearings.

(a) The department's findings following an informal hearing, or its determination following a settlement conference, may be appealed to the State Office of Administrative Hearings by submitting a request by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Ignition Interlock Device website, within thirty (30) calendar days after receipt of the findings or determination.

(b) Following adequate notice of the hearing, failure of the respondent to appear at the time of hearing shall entitle the department to request from the administrative law judge an order dismissing the case from the docket and to informally dispose of the case on a default basis.

§10.6. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may deny an application for authorization or revoke an authorization if the applicant or vendor has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an ignition interlock vendor, as provided in this section.

(b) The department has determined the types of offenses detailed in subsection (b)(1) - (4) of this section directly relate to the duties and responsibilities of ignition interlock device vendors. A conviction for an offense within one (1) or more of the categories in this subsection may result in the denial of an application (initial or renewal) for a vendor authorization or the revocation of an authorization. The Texas Penal Code references provided in this subsection are for illustrative purposes and are not intended to exclude similar offenses in other state or federal codes. The types of offenses directly related to the duties and responsibilities of vendors include, but are not limited to:

(1) Theft (any offense within Texas Penal Code, Chapter 31);

(2) Fraud (any offense within Texas Penal Code, Chapter 32);

(3) Bribery and Corrupt Influence (any offense within Texas Penal Code, Chapter 36); and

(4) Perjury and Other Falsification (any offense within Texas Penal Code, Chapter 37).

(c) A felony conviction for one of the offenses listed in subsection (b) of this section is disqualifying for ten (10) years from the date of the conviction.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five (5) years from the date of conviction.

(e) For the purposes of this chapter, all references to conviction are to those for which the judgment has become final.

(f) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of an ignition interlock vendor:

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

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation;

(7) evidence the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and

(8) any other evidence relevant to the person's fitness for the certification sought.

(g) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

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

Filed with the Office of the Secretary of State on February 14, 2020.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER B. VENDOR AUTHORIZATION

37 TAC §§10.11, 10.13, 10.14, 10.17

The Texas Department of Public Safety (the department) proposes amendments to §10.11, §10.13, and §10.14 and new §10.17, concerning Vendor Authorization. These rule changes and new rule are necessary to implement Senate Bill 616, 86th Legislative Session. Senate Bill 616 authorizes the department to obtain fingerprints and to access and use criminal history record information that relates to those who hold or apply for authorization to act as vendors of ignition interlock devices. This authority requires the adoption of rules relating to disqualifying criminal offenses and the procedures for appeal of licensing actions based on criminal history determinations. Senate Bill 616 also requires adoption of procedures for the informal resolution of complaints against ignition interlock vendors. Senate Bill 616 requires changes to the date of expiration, the adoption of procedures for the informal resolution of complaints against device vendors, and the development of a penalty schedule for violations of a law or rule relating to the vendor authorization.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect

there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be enhanced public safety through criminal history background checks, and greater efficiency in the administrative oversight of ignition interlock vendors through the informal resolution of complaints.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal and new rule are made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476 which authorizes the department to adopt rules to administer the program; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including the Ignition Interlock Device program.

Texas Government Code, §411.004(3); Texas Transportation Code, §521.2476; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, are affected by this proposal.

§10.11. Application; Renewal.

(a) Application for vendor authorization must be made in the manner required by the department. The application must contain all materials or information required by this chapter, and the initial inspection fee must be paid as provided in §10.15 of this title (relating to Inspections and Fees).

(b) If the applicant is an entity other than an individual, the applicant must identify each partner or shareholder who owns a 25% or greater interest in the entity, the director of the entity, and each officer of the entity who oversees the entity's regulated functions.

(c) ~~(b)~~ In order to obtain an [~~maintain~~] authorization, the vendor must have:

(1) All necessary equipment and tools for the proper installation, removal, inspection, calibration, repair, and maintenance, of the type of IID(s) to be installed or serviced by the vendor, as determined by the device manufacturer and standard industry protocols;

(2) A designated waiting area separate from the installation area, to ensure customers do not observe the installation of the IID; and

(3) Proof of liability insurance providing coverage for damages arising out of the operation or use of IIDs with a minimum policy limit of $1,000,000 per occurrence and $3,000,000 aggregate total.

(d) [~~(c)~~] If an incomplete application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for acceptance. The applicant has 90 [~~60~~] calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn.

(e) [~~(d)~~] An application is complete when:

(1) It contains all of the items required pursuant to this section;

(2) All required fees have been paid; and

(3) All requests for additional information have been satisfied.

(f) The vendor authorization expires on the second anniversary of the date of original issuance. Application for renewal must be made in the manner required by the department, and must meet all requirements for an original application. The renewal application must be submitted prior to expiration.

§10.13. Denial of Application for Vendor Authorization.

(a) The department may deny an application for vendor authorization if:

(1) The applicant attempts to obtain an authorization by means of fraud, misrepresentation, or concealment of a material fact;

(2) The applicant's prior authorization has been revoked and the basis for the revocation remains;

(3) The applicant fails to satisfy the standards for equipment and facilities, or insurance, as required by this chapter;[~~, or~~]

(4) The applicant, or the applicant's partner, shareholder, director or officer as described in §10.11 of this title (relating to Application; Renewal) is disqualified under §10.6 of this title (relating to Disqualifying Offenses); or

(5) [~~(4)~~] Otherwise violates the Act or this chapter.

(b) The denial will become final on the thirtieth calendar day following the vendor's receipt of the notice of denial, unless the vendor requests a hearing as outlined in §10.4 of this title (relating to Informal Hearings; Settlement Conference [~~Hearings~~]).

§10.14. Reprimand, Suspension, or Revocation Of Vendor Authorization.

(a) The department may reprimand, suspend, or revoke an authorization if the vendor:

(1) Fails to submit the required reports to the department pursuant to §10.12 of this title (relating to Vendor Standards);

(2) Willfully or knowingly submits false, inaccurate, or incomplete information to the department;

(3) Violates any provision of §10.12 of this title;

(4) Fails to pay the annual inspection fee as provided in §10.15 (relating to Inspections and Fees);

(5) Violates any law of this state relating to the conduct of business in this state; [~~or~~]

(6) Is determined to be disqualified, or if a vendor's partner, shareholder, director or officer as described in §10.11 of this title (relating to Application; Renewal) is disqualified, under §10.6 of this title (relating to Disqualifying Offenses); or

(7) [~~(6)~~] Otherwise violates the Act or this chapter.

(b) Prior to taking action against an authorization for a violation of subsection (a) of this section, the department will provide notice pursuant to §10.3 of this title (relating to Notice).

(c) The department's determination to revoke an authorization for any administrative, noncriminal history based violation may be based on the [~~following~~] considerations described in paragraphs (1) - (6) of this subsection:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) The economic harm to property or the public caused by the violation;

(3) The effect of the violation on the efficient administration of the program;

(4) The history of previous violations, including any warnings or other attempts to gain compliance;

(5) Efforts to correct the violation; and

(6) Any other matter that justice may require.

(d) The revocation will become final on the thirtieth calendar day following the vendor's receipt of the notice of revocation, unless the vendor requests a hearing as outlined in §10.4 of this title (relating to Informal Hearings; Settlement Conference [~~Hearings~~]).

(e) The revocation proceeding may be dismissed, or the revocation may be probated, upon a showing of compliance.

§10.17. Administrative Penalties.

(a) In addition to or in lieu of discipline imposed pursuant to §10.14 of this title (relating to Reprimand, Suspension, and Revocation of Vendor Authorization) the department may impose an administrative penalty on a person who violates this chapter or the Act.

(b) The graphic in this subsection reflects the department's penalty schedule applicable to administrative penalties imposed under this section. For any violation not expressly addressed in the penalty schedule, the department may impose a penalty not to exceed $500.00 for the first (1st) violation. For the second (2nd) violation within the preceding one (1) year period, the penalty may not exceed $1,000.00. Figure: 37 TAC §10.17(b)

(c) Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §10.4 of this title (relating to Informal Hearing; Settlement Conference). The failure to timely appeal the proposed action will result in the issuance of a final order.

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 February 14, 2020.

TRD-202000610
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 424-5848

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SUBCHAPTER D. IGNITION INTERLOCK DEVICE APPROVAL

37 TAC §10.32

The Texas Department of Public Safety (the department) proposes amendments to §10.32, concerning Denial of Request for Approval; Revocation of Device Approval. This rule change is a non-substantive change to the title of a cross-referenced rule. The latter rule's title is being changed as part of the department's implementation of Senate Bill 616, 86th Legislative Session.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be enhanced public safety through criminal history background checks, and greater efficiency in the administrative oversight of ignition interlock vendors through the informal resolution of complaints.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476 which authorizes the department to adopt rules to administer the program; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including the Ignition Interlock Device program.

Texas Government Code, §411.004(3); Texas Transportation Code, §521.2476; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, are affected by this proposal.

§10.32. Denial of Request for Approval; Revocation of Device Approval.

(a) A request for device approval may be denied if the device fails to meet the requirements for approval.

(b) Prior approval of a device may be revoked if changes in National Highway Traffic Safety Administration model specifications are such that the device no longer meets the requirements for approval.

(c) Denial of a request for device model approval, or revocation of a prior approval, may be appealed as provided in §10.4 of this title (relating to Informal Hearing; Settlement Conference [~~Hearings~~]).

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 February 14, 2020.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1, 23.3, 23.5, 23.6

The Texas Department of Public Safety (the department) proposes amendments to §§23.1, 23.3, 23.5, and 23.6, concerning Vehicle Inspection and Vehicle Inspector Certification. These rule changes are in part necessary to implement Senate Bill 616, 86th Legislative Session, which amends Texas Transportation Code, Chapter 548. The proposed changes to §23.5, concerning Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses, implement House Bill 1342, 86th Legislative Session, which amended Occupations Code, §§53.021, 53.022, and 53.023. The proposed changes to §23.6, concerning Training, clarify the department's authority to provide online training for vehicle inspectors.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the effective implementation of legislation, and greater public safety as a result of enhanced background checks of vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program;

will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation. The proposed rulemaking does decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; Texas Transportation Code, §548.410, which authorizes the Department of Public Safety to adopt rules establishing the expiration dates of inspector and station certificates; and Texas Transportation Code, §§ 548.506 and 548.507, which authorizes the Public Safety Commission to adopt rules establishing fees for certification as a vehicle inspector, and as an inspection station, respectively.

Texas Government Code, §411.004(3), and Texas Transportation Code, §§548.002, 548.410, 548.506, and 548.507 are affected by this proposal.

§23.1. New or Renewal Vehicle Inspection Station Applications.

(a) Applicants for new or renewal vehicle inspection station certification must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspection station application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspection station application must include, but is not limited to, the items listed in paragraphs (1) - (3) of this subsection:

(1) Criminal history disclosure of all convictions, if the applicant is an entity other than an individual, the executive officer or other individual specifically authorized by the entity to sign the application[and deferred adjudications for each owner or designee engaged in the regular course of business as a vehicle inspection station];

(2) Proof of ownership and current status as required by the department. Such proof includes, but is not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts; and

(3) Payment of the [All fees required pursuant to Texas Transportation Code, Chapter 548 (the Act). The] vehicle inspection station nonrefundable new and renewal application fee of $100 [is nonrefundable].

(d) If an incomplete new or renewal vehicle inspection station application is received, notice will be sent to the applicant stating [that] the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspection station applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the information [documentation], the application will be considered withdrawn and a new application must be submitted.

(f) A new or renewal vehicle inspection station application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter and the Texas vehicle inspection program's instructions.

(3) All fees are [have been] paid pursuant to the Act and this chapter.

(4) All requests for additional information are [have been] satisfied.

(g) The vehicle inspection station certificate will expire on August 31 of the odd numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspection station certification issued by the department is conditional upon the receipt of criminal history record information.

(i) For a new or renewal vehicle inspection station application to be approved, the owner must:

(1) be at least 18 years of age;

(2) provide proof of identification as required by the department;

(3) not be currently suspended or revoked in the Texas vehicle inspection program;

(4) complete department provided training;

(5) have a facility that meets the standards for the appropriate class set forth in this chapter;

(6) have equipment that meets the standards set forth in §23.13 of this title (relating to Equipment Requirements for All Classes of Vehicle Inspection Stations); and

(7) meet all other eligibility criteria under the Act or this chapter.

(j) Certificate holders of vehicle inspection stations must submit a new application, including applicable fees, [in order] to change a location, or make a change of ownership.

(k) Applicants for new or renewal vehicle inspection station certification must apply for one of the classes defined in paragraphs (1) - (3) of this subsection:

(1) Public--A station open to the public performing inspections on vehicles presented by the public. Stations open to the public will not be issued a fleet vehicle inspection station license unless such stations are currently certified as a public vehicle inspection stations;

(2) Fleet--A station not providing vehicle inspection services to the public; or

(3) Government--A station operated by a political subdivision, or agency of this state.

§23.3. New or Renewal Vehicle Inspector Applications.

(a) Applicants for a new or renewal vehicle inspector certificate must apply in a manner prescribed by the department.

(b) By submitting a new or renewal vehicle inspector application form, the applicant agrees to allow the department to conduct background checks as authorized by law.

(c) A new or renewal vehicle inspector application must include, but is not limited to, the items listed in paragraphs (1) and (2) of this subsection:

(1) Criminal [~~criminal~~] history disclosure of all convictions [~~and deferred adjudications~~] of the vehicle inspector applicant; and

(2) Payment of the [~~all fees required pursuant to Texas Transportation Code, Chapter 548 (the Act).~~ The] new or renewal vehicle inspector nonrefundable application fee of $25 [~~is nonrefundable~~].

(d) If an incomplete new or renewal vehicle inspector application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for completion.

(e) The new or renewal vehicle inspector applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the information [~~documentation~~], the application will be considered withdrawn.

(f) A new or renewal vehicle inspector application is complete when:

(1) It contains all items required by the department.

(2) It conforms to the Act, this chapter, and the Texas vehicle inspection program's instructions.

(3) All fees are [~~have been~~] paid pursuant to the Act and this chapter.

(4) All requests for additional information are [~~have been~~] satisfied.

(g) The new or renewal vehicle inspector certificate will expire on August 31 of the even numbered year following the date of issuance and is renewable every two years thereafter.

(h) A renewal of the vehicle inspector certification issued by the department is conditional upon the receipt of criminal history record information.

(i) For a new or renewal vehicle inspector application to be approved the applicant must:

(1) be at least 18 years of age;

(2) hold a valid driver license to operate a motor vehicle in Texas;

(3) not be currently suspended or revoked in the Texas vehicle inspection program;

(4) complete department provided training as outlined in this chapter;

(5) pass with a grade of not less than 80, an examination on the Act, this chapter, and regulations of the department pertinent to the Texas vehicle inspection program;

(6) successfully demonstrate ability to correctly operate the testing devices; and

(7) meet all other eligibility criteria under the Act or this chapter.

§23.5. Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses.

(a) Vehicle inspection stations and vehicle inspectors are entrusted with ensuring the safety and fitness of vehicles traveling on the roads of Texas. Vehicle inspection stations and vehicle inspectors have constant access to and are responsible for the lawful disposition of government documents. For these reasons, the department has determined that the offenses contained within this section relate directly to the duties and responsibilities of vehicle inspection stations and vehicle inspectors certified under Texas Transportation Code, Chapter 548. The types of offenses listed in this section are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and any such offenses regardless of the code in which they appear.

(b) The offenses listed in paragraphs (1) - (9) of this subsection are intended to provide guidance only, and are not exhaustive of either the types of offenses that may relate to vehicle inspections or the operation of a vehicle inspection station or those that are independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The disqualifying offenses also include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of a disqualifying offense under the laws of this state. Such offenses also include the "aggravated" or otherwise heightened versions of the offenses listed in paragraphs (1) - (9) of this subsection. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in vehicle inspections or the operation of a vehicle inspection station, the department may find that a conviction not described in this section also renders a person unfit to hold a certificate as a vehicle inspector or vehicle inspection station owner. In particular, an offense that is committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or an offense that is facilitated by licensure as an owner or inspector, will be considered related to the occupation and will render the person unfit to hold the certification.

(1) Arson, Criminal Mischief, and Other Property Damage or Destruction (Texas Penal Code, Chapter 28).

(2) Robbery (Texas Penal Code, Chapter 29).

(3) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30).

(4) Theft (Texas Penal Code, Chapter 31).

(5) Fraud (Texas Penal Code, Chapter 32).

(6) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36).

(7) Perjury and Other Falsification (Texas Penal Code, Chapter 37).

(8) Criminal Homicide (Texas Penal Code, Chapter 19).

(9) Driving Related Intoxication Offenses (Texas Penal Code, Chapter 49).

(c) A felony conviction for any such offense is disqualifying for ten years from the date of conviction, unless the offense was committed in one's capacity as a vehicle inspection station owner or vehicle inspector, or was facilitated by licensure as an owner or inspector, in which case it is permanently disqualifying. Conviction for a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12 §3g or Article 42A.054, is permanently disqualifying.

[~~(d) A felony conviction for an offense not listed or described in this section that does not relate to the occupation is disqualifying for five years from the date of commission, pursuant to Texas Occupations Code, §53.021(a)(2).~~]

(d) [~~(e)~~] A Class A misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle in-

spection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for five years from the date of conviction.

(e) [~~(f)~~] A Class B misdemeanor conviction for an offense listed in this section and any other offense determined by the department to directly relate to the duties and responsibilities of vehicle inspection stations or vehicle inspectors, including any unlisted offense committed in one's capacity as a vehicle inspection station owner or vehicle inspector or that was facilitated by licensure as an owner or inspector, is disqualifying for two years from the date of conviction.

~~[(g) For purposes of this section, a person is convicted of an offense when an adjudication of guilt or an order of deferred adjudication for the offense is entered against the person by a court of competent jurisdiction.]~~

(f) [~~(h)~~] A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a vehicle inspection station certificate holder or vehicle inspector:

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

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation; [~~from:~~]

~~[(A) prosecutors, law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(B) the sheriff or chief of police in the community where the person resides; or]~~

~~[(C) any other person in contact with the convicted person;]~~

(7) evidence the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and

(8) any other evidence relevant to the person's fitness for the certification sought.

(g) [~~(i)~~] The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

§23.6. Training.

(a) When attending a department [~~the department's~~] training course, the applicant must:

(1) provide [~~Provide~~] a department approved government issued photo identification;[~~.~~]

(2) not [~~Not~~] be under the influence of drugs or alcohol;[~~.~~]

(3) cooperate [~~Cooperate~~] with the classroom rules as provided by department personnel;[~~.~~]

(4) maintain [~~Maintain~~] good order and discipline during the training course; and[~~.~~]

(5) successfully [~~Successfully~~] pass the written examination.

(b) Conduct which is disruptive or unsafe shall be grounds for immediate ejection from the training course and may result in the termination of the application process.

(c) The applicant for a vehicle inspection station certification or vehicle inspector certification will be given three (3) opportunities [~~an opportunity~~] to pass the written exam [~~up to three times~~]. Failure to pass the exam within 30 days of the date of training will terminate the application process.

(d) Once a completed application for a renewal of a [~~an~~] vehicle inspection station or vehicle inspector certification is received by the department, the applicant may be required to receive training and take a test prior to recertification.

(e) Each certified vehicle inspector must qualify, by training and examination provided by the department, for one or more of the endorsements listed in paragraphs (1) - (3) of this subsection which indicate the type of vehicle inspection reports the inspector is certified to issue and the types of vehicle inspections the inspector is qualified to perform.

(1) S. May inspect any vehicle requiring a safety only vehicle inspection report, i.e., one-year, two-year, trailer, and motorcycle.

(2) C. May inspect any vehicle requiring a commercial inspection report, i.e., commercial motor vehicle and commercial trailer.

(3) E. May inspect any vehicle requiring an emissions test report, i.e., one-year safety/emissions and one-year emissions only (unique emissions test only inspection report).

(f) The department representative may, if the vehicle inspector's [~~inspector~~] performance warrants, require the [~~certified~~] vehicle inspector to take and pass all or a portion of the written [~~or demonstration~~] test [~~at any time~~], or [~~may~~] require attendance at a vehicle inspection training program. Failure to pass a required test, or refusal to comply with the department representative's request under this section, may result in suspension of the vehicle inspector's certificate. The suspension will remain in effect until the inspector passes the required test or complies with the department representative's request, whichever is applicable.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER B. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

37 TAC §§23.12 - 23.14

The Texas Department of Public Safety (the department) proposes amendments to §§23.12 - 23.14, concerning General Vehicle Inspection Station Requirements. The proposed amendment to §23.12, concerning Standards of Conduct, implements Senate Bill 711, 86th Legislative Session, which authorizes the Department of Public Safety to include vehicle safety recall information on the Vehicle Inspection Report. The proposal requires the vehicle inspector to advise the vehicle owner or operator of the recall and any available details. The proposed amendment to §23.13, concerning Equipment Requirements for All Classes of Vehicle Inspection Stations, removes an unnecessary equipment requirement, and the proposed amendment to §23.14, concerning Vehicle Inspection Station Signage, clarifies that the requirement to post the station's hours of operation refers only to the hours vehicle inspections are offered.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the effective implementation of legislation, and greater transparency regarding vehicle inspection station hours of operation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002, are affected by this proposal.

§23.12. Standards of Conduct.

(a) All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department provided device at the time of that inspection.

(b) The DPS Training and Operations Manual for official vehicle inspection stations and certified vehicle inspectors must be the instruction and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed.

(c) Fleet and government vehicle inspection stations must not inspect vehicles owned by officers, employees, or the general public.

(d) A vehicle inspection station must have a certified and properly endorsed vehicle inspector to perform inspections in a prompt manner during posted business hours.

(e) No vehicle inspection station shall refuse to inspect a vehicle for which it is endorsed that is presented for inspection during the posted business hours.

(f) A certified vehicle inspector must conduct a complete and thorough inspection of every vehicle presented for an official inspection in accordance with this chapter and Texas Transportation Code, Chapter 548 (the Act), as authorized by the vehicle inspector's certification and by the vehicle inspection station's endorsement.

(g) A certified vehicle inspector must not use, nor be under the influence of, alcohol or drugs while on duty. Prescription drugs may be used when prescribed by a licensed physician, provided the inspector is not impaired while on duty.

(h) A certified vehicle inspector must inspect a vehicle presented for inspection within a reasonable time.

(i) A certified vehicle inspector must notify the department representative supervising the vehicle inspection station immediately if his driver license is suspended or revoked.

(j) A certified vehicle inspector must conduct each inspection in the approved inspection area of the vehicle inspection station location designated on the certificate of appointment. The road test may be conducted outside this area.

(k) The certified vehicle inspector must consult the vehicle owner or operator prior to making a repair or adjustment.

(l) Inspections may be performed by more than one certified vehicle inspector, but the inspector of record is responsible for ensuring [~~that~~] the inspection is completed in accordance with the Act and this chapter.

(m) The certified vehicle inspector must not require a vehicle owner whose vehicle has been rejected to have repairs made at a specific garage.

(n) The certified vehicle inspector must maintain a clean and orderly appearance and be courteous in his contact with the public.

(o) Any services offered in conjunction with the vehicle inspection must be separately described and itemized on the invoice or receipt.

(p) At the conclusion of the inspection, the vehicle inspector must issue a signed vehicle inspection report to the owner or operator of the vehicle indicating whether the vehicle passed or failed.

(q) If the vehicle being inspected is subject to a safety recall and has not been repaired or the repairs are incomplete, the inspector shall advise the vehicle owner or operator that the vehicle is subject to a recall, review with the vehicle owner or operator the details regarding the recall reflected on the inspection report, and advise the vehicle owner or operator that further details can be obtained from the dealer or manufacturer.

§23.13. Equipment Requirements for All Classes of Vehicle Inspection Stations.

(a) All testing equipment must be approved by the department. All testing equipment must be installed and used in accordance with the manufacturer's and department's instructions. Equipment must be arranged and located at or near the approved inspection area and readily available for use.

(b) When equipment adjustments and calibrations are needed, the manufacturer's specifications and department's instructions must be followed. Defective equipment must not be used and the vehicle inspector or station must cease performing inspections until such equipment is replaced, recalibrated or repaired and returned to an operational status.

(c) To be certified as a vehicle inspection station, the station is required to possess and maintain, at a minimum, the equipment listed in paragraphs (1) - (7) of this subsection:

(1) a measured and marked brake test area which has been approved by the department, or an approved brake testing device;

(2) a measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles, with the exception that the 80 inch measuring device requirement does not apply to motorcycle-only vehicle inspection stations;

(3) a gauge for measuring tire tread depth;

[~~(4) a 1/4 inch round hole punch;~~]

(4) [~~(5)~~] a measuring device for checking brake pedal reserve clearance. This requirement does not apply to vehicle inspection stations with only a motorcycle endorsement;

(5) [~~(6)~~] a department approved device for measuring the light transmission of sunscreening devices. This requirement does not apply to government inspection stations, or fleet inspection stations that have provided the department biennial written certification that the station has no vehicles equipped with a sunscreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement; and

(6) [~~(7)~~] a department approved device with required adapters for checking fuel cap pressure. The department requires vehicle inspection stations to obtain updated adapters as they become available from the manufacturer. A vehicle inspection station may not inspect a vehicle for which it does not have an approved adapter for that vehicle. This device is not required of government inspection stations or fleet inspection stations which have provided the department biennial written certification that the station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This device is [~~also~~] not required of motorcycle-only or trailer-only inspection stations and certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline.

(d) To be certified as a non-emissions vehicle inspection station, the station must have:

(1) an approved and operational electronic station interface device;

(2) a printer and supplies necessary for printing a vehicle inspection report on 8 1/2 x 11 paper; and

(3) a telephone line, or internet connection for the electronic station interface device to be used during vehicle inspections either dedicated solely for use with the electronic device, or shared with other devices in a manner approved by the department.

(e) For vehicle emissions inspection station requirements, see Subchapter E of this chapter (relating to Vehicle Emissions Inspection and Maintenance Program).

§23.14. Vehicle Inspection Station Signage.

(a) Every public vehicle inspection station must display the official vehicle inspection station sign and inspection hours [~~of operation~~] in a manner clearly visible to the public.

(b) The official vehicle inspection station sign remains the property of the department as a means of identification of the vehicle inspection station. The sign must be surrendered upon demand by the department.

(c) The department will issue only one official vehicle inspection station sign per public vehicle inspection station license issued. The sign must not be altered in any manner. Dissimilar signs may also be displayed.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.51, §23.55

The Texas Department of Public Safety (the department) proposes amendments to §23.51 and §23.55, concerning Vehicle Emissions Inspection and Maintenance Program. These rule

changes are necessary to address changes to the vehicle emission test requirements that took effect January 1, 2020.

The proposals remove references to vehicle emissions tailpipe tests, i.e., the Acceleration Simulation Mode (ASM) and Two-Speed Idle (TSI) tests, and the related equipment requirements. These tests, and the equipment necessary to conduct them, will no longer be necessary as of January 1, 2020. On that date the vehicles for which these tests are necessary became exempt from the state's emission inspection requirements.

On January 1, 2020, model year 1995 vehicles became exempt from the state's emissions inspection requirements pursuant to Texas Health and Safety Code §382.203(a)(2) (exempting vehicles twenty five years old or older). In addition, pursuant to federal Environmental Protection Agency regulations, model year 1996 and newer vehicles are equipped with on-board diagnostics (OBD) systems that enable emissions tests using the vehicle's computer and which render tailpipe tests unnecessary. For these reasons the tailpipe tests and the equipment necessary to conduct them are no longer be necessary as of January 1, 2020.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the effective implementation of statute and compliance with the State Implementation Plan for air quality.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

§23.51. Vehicle Emissions Inspection Requirements.

(a) In affected counties, to be certified by the department as a vehicle inspection station, the station must be certified by the department to perform vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as stations endorsed only to issue inspection reports for one or more of the listed categories of vehicles: trailer, motorcycle, commercial motor vehicle, or commercial trailer.

(b) A vehicle inspection station in a county not designated as an affected county shall not inspect a designated vehicle unless the vehicle inspection station is certified by the department to perform emissions testing, or unless the motorist presenting the vehicle signs an affidavit as prescribed by the department stating the vehicle is exempted from emissions testing. Under the exceptions outlined in paragraphs (1) - (3) of this subsection, a vehicle registered in an affected county may receive a safety inspection at a vehicle inspection station in a non-affected county.

(1) The vehicle is not a designated vehicle because it has not and will not be primarily operated in an affected county. This exception includes the subparagraphs (A) and (B) of this paragraph:

(A) Company fleet vehicles owned by business entities registered at a central office located in an affected county but operated from branch offices and locations in non-affected counties on a permanent basis.

(B) Hunting and recreational vehicles registered to the owner in an affected area, but permanently maintained on a hunting property or vacation home site in a non-affected county.

(2) The vehicle no longer qualifies as a designated vehicle because it no longer and will be no longer primarily operated in an affected county. For example, the vehicle registration indicates it is registered in an affected county, but the owner has moved, does not currently reside in, nor will primarily operate the vehicle in an affected county.

(3) The vehicle is registered in an affected county and is primarily operated in a non-affected county, but will not return to an affected county prior to the expiration of the current registration. Under this exception the vehicle will be reinspected at a vehicle inspection station certified to do vehicle emissions testing immediately upon return to an affected county. Examples of this exception include vehicles operated by students enrolled at learning institutions, vehicles operated by persons during extended vacations, or vehicles operated by persons on extended out-of-county business.

(c) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a vehicle inspection station certified by the department to perform vehicle emissions testing. The exceptions outlined in paragraphs (1) and (2) of this subsection apply to this provision.

(1) Commercial motor vehicles, as defined by Texas Transportation Code, §548.001, meeting the description of "designated vehicle" provided in this section. Designated commercial motor vehicles must be emissions tested at a vehicle inspection station certified by the department to perform vehicle emissions testing and must be issued an emissions test only inspection report, as authorized by Texas Transportation Code, §548.252 prior to receiving a commercial motor vehicle safety inspection report pursuant to Texas Transportation Code, Chapter 548. The emissions test only inspection report must be issued within 15 calendar days prior to the issuance of the commercial motor vehicle safety inspection report and will expire at the same time the newly issued commercial motor vehicle safety inspection report expires.

(2) Vehicles presented for inspection by motorists in counties not designated as affected counties meeting other exceptions listed in this section.

(d) A vehicle with a currently valid safety inspection report presented for an "Emissions Test on Resale" inspection shall receive an emissions test. The owner or selling dealer may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection report; or

(2) an emissions test and receipt of the emissions test only inspection report. The emissions test only inspection report will expire at the same time as the current safety inspection report.

(e) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old up to and including 24 years old, presented for the annual vehicle safety inspection in affected counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection. [~~Emissions testing will be conducted as follows:~~]

[~~(1) In all affected counties, except Travis, Williamson, and El Paso counties:~~]

[~~(A) All 1996 model year and newer designated vehicles, which are equipped with an onboard diagnostic (OBD) system, will be emission tested using approved OBD inspection and maintenance (I/M) test equipment.~~]

[~~(B) All 1995 model year and older designated vehicles will be emission tested using the acceleration simulation mode (ASM-2) I/M test equipment.~~]

[~~(C) Vehicles which cannot be tested using the prescribed emission testing equipment will be tested using the default methods described within this subparagraph, only as prompted by the emissions testing analyzer or as approved by the department. OBD vehicles will be tested using ASM-2 test equipment. If the vehicle cannot be tested on ASM-2 test equipment (four-wheel drive and unique transmissions), then the vehicle will be tested using approved two-speed idle (TSI) I/M test equipment.~~]

[~~(2) This paragraph applies to all designated vehicles in Travis, Williamson and El Paso counties.~~]

[~~(A) All 1996 model year and newer designated vehicles, which are equipped with an onboard diagnostic system, will be emission tested using approved OBD I/M test equipment.~~]

[~~(B) All 1995 model year and older designated vehicles will be emissions tested using TSI I/M test equipment.~~]

[~~(C) Vehicles which cannot be tested using the prescribed emission testing equipment will be tested using the following default method, only as prompted by the emissions testing analyzer or as approved by the department. OBD vehicles will be tested using TSI I/M test equipment.~~]

[~~(f) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be approved by the certified inspector, who will issue a unique emissions inspection report pursuant to Texas Transportation Code, §548.252. The only valid inspection report for designated vehicles shall be a unique emissions inspection report approved by the department, unless otherwise provided in this chapter.~~]

(f) [~~(g)~~] The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days.

(g) [~~(h)~~] Federal and state governmental or quasi-governmental agency vehicles that are primarily operated in affected counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M State Implementation Plan (SIP).

(h) [~~(i)~~] Any motorist in an affected county whose designated vehicle has been issued an emissions related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested at the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(i) [~~(j)~~] Inspection reports previously issued in a newly affected county shall be valid and remain in effect until the expiration date thereof.

(j) [~~(k)~~] An emissions test only inspection report expires at the same time the vehicle's registration expires.

(k) [~~(l)~~] The department may perform quarterly equipment and/or gas audits on all vehicle emissions analyzers used to perform vehicle emissions tests. If a vehicle emissions analyzer fails the calibration process during the gas audit, the department may cause the appropriate vehicle inspection station to cease vehicle emissions testing with the failing emissions analyzer until all necessary corrections are made and the vehicle emissions analyzer passes the calibration process.

(l) [~~(m)~~] Pursuant to the Texas I/M SIP, the department may administer and monitor a follow up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in Code of Federal Regulations, Title 40, §51.353(c)(3).

(m) [~~(n)~~] Vehicle owners receiving a notice from the department requiring an emission test shall receive an out-of-cycle test, if the vehicle already has a valid safety and emission inspection report. This test will be conducted in accordance with the terms of the department's notice. The results of this verification emissions inspection shall be reported (online) to the Texas Information Management System Vehicle Identification Database. Vehicles identified to be tested by the notice will receive the prescribed test regardless of the county of registration and regardless of whether the vehicle has a valid safety inspection re-

port or a valid safety and emissions inspection report. If the vehicle has a valid safety inspection report or a valid safety and emissions inspection report, the owner may choose one of two options:

(1) a complete safety and emissions test and receipt of a new inspection report; or

(2) The emissions test only inspection report will expire at the same time as the current safety inspection report.

(n) [~~(o)~~] Pursuant to Texas Education Code, §51.207, public institutions of higher education located in affected counties may require vehicles to be emissions tested as a condition to receive a permit to park or drive on the grounds of the institution, including vehicles registered out of state.

(1) Vehicles presented under this subsection shall receive an emissions inspection and be issued a unique emissions test only inspection report:

(A) For vehicles registered in this state from counties without an emissions testing program, the emissions test only inspection report will expire at the same time as the vehicle's current safety inspection report.

(B) For vehicles registered in another state, the emissions test only inspection report will expire on the twelfth month after the month indicated on the date of the vehicle inspection report generated by the emissions inspection. Under no circumstances is the vehicle inspection station authorized to remove an out-of-state inspection and/or registration certificate, including safety, emissions, or a combination of any of the aforementioned.

(2) The vehicle inspector shall notify the operator of a vehicle presented for an emissions inspection under this subsection of the requirement to retain the vehicle inspection report as proof of emissions testing under Texas Education Code, §51.207.

§23.55. Certified Emissions Inspection Station and Inspector Requirements.

(a) To be certified by the department as an emissions inspection station for purposes of the emissions inspection and maintenance (I/M) program, the station must:

(1) be certified by the department as an official vehicle inspection station;

(2) comply with this chapter, the DPS Training and Operations Manual for Vehicle Inspection Stations and Certified Inspectors, Texas Transportation Code, Chapter 547 and Chapter 548, and regulations of the department;

(3) complete all applicable forms and reports as required by the department;

(4) purchase or lease emissions testing equipment currently certified by the Texas Commission on Environmental Quality (TCEQ) to emissions test vehicles and maintain existing emissions testing equipment to meet the certification requirements of the TCEQ;

(5) have a dedicated data transmission line for each vehicle emissions analyzer to be used to perform vehicle emissions tests; and

(6) enter into and maintain a business arrangement with the Texas Information Management System contractor to obtain a telecommunications link to the Texas Information Management System vehicle identification database for each vehicle emissions analyzer to be used to inspect vehicles as described in the Texas I/M State Implementation Plan (SIP).

(b) All public certified emissions inspection stations in affected counties[~~, excluding Travis, Williamson and El Paso counties~~] shall offer [~~both the acceleration simulated mode (ASM-2) test and~~] the onboard diagnostic (OBD) test. [~~Certified emissions inspection stations in these affected counties desiring to offer OBD only emission testing to the public must request a waiver as low volume emissions inspection station from a department regional manager, as provided in §23.56 of this title (relating to Waiver for Low Volume Emissions Inspection Stations). All public certified emissions inspection stations in Travis, Williamson and El Paso counties must offer both the OBD and two speed idle (TSI) test.~~]

(c) The fee for an emissions test must provide for one free retest for each failed initial emissions inspection, provided that the motorist has the retest performed at the same vehicle inspection station where the vehicle originally failed and the retest is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(d) To qualify as a certified emissions inspector, an applicant must:

(1) be certified by the department as an official vehicle inspector;

(2) complete the training required for the vehicle emissions inspection program and receive the department's certification for such training;

(3) comply with the DPS Training and Operations Manual for Official Vehicle Inspection Stations and Certified Inspectors, this chapter, and other applicable rules, regulations and notices of the department; and

(4) complete all applicable forms and reports as required by the department.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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37 TAC §23.56

The Texas Department of Public Safety (the department) proposes the repeal of §23.56, concerning Waiver for Low Volume Emissions Inspection Stations. This repeal is necessary to address changes to the vehicle emission test requirements that took effect January 1, 2020.

Section 23.56 authorizes a waiver from the requirement that vehicle emissions inspection stations maintain the equipment necessary to conduct vehicle emissions tailpipe tests. These tests, and the equipment necessary to conduct them, are no longer necessary as of January 1, 2020. On that date, model year 1995 vehicles became exempt from the state's emissions inspection requirements pursuant to Texas Health and Safety Code, §382.203(a)(2) (exempting vehicles twenty five years old or older). In addition, pursuant to federal Environmental Protection Agency regulations, model year 1996 and newer

vehicles are equipped with on-board diagnostics (OBD) systems that enable emissions tests using the vehicle's computer and which render tailpipe tests unnecessary. For these reasons the tailpipe tests and the equipment necessary to conduct them are no longer necessary as of January 1, 2020, and §23.56's waiver therefore is unnecessary.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the effective implementation of statute and compliance with the State Implementation Plan for air quality.

The department has determined this repeal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this repeal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

§23.56. Waiver for Low Volume Emissions Inspection Stations.

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. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62, §23.63

The Texas Department of Public Safety (the department) proposes amendments to §23.62 and §23.63, concerning Violations and Administrative Penalties. These rule changes are necessary to implement Senate Bill 616, 86th Legislative Session. The proposed amendments reflect Senate Bill 616's authorization for the adoption of procedures relating to the informal resolution of complaints against vehicle inspectors and inspection stations and the development of a penalty schedule for violations of a law or rule relating to the inspection of vehicles. The amendments also remove statutory references to Texas Transportation Code, §548.405 and §548.407, which were repealed by Senate Bill 616.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the effective implementation of legislation and enhanced administrative efficiency relating to administrative actions against vehicle inspectors and inspection station owners.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code Chapter 411, Subchapters Q and R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including that of the Vehicle Inspection program; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Government Code Chapter 411, Subchapters Q and R; and Texas Transportation Code, §548.002, are affected by this proposal.

§23.62. Violations and Penalty Schedule.

(a) In [~~As provided in Texas Transportation Code, §548.405, and in~~] accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) The [~~Pursuant to Texas Transportation Code, §548.405(h) and (i), the~~] department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.
Figure: 37 TAC §23.62 (b)
[~~Figure: 37 TAC §23.62(b)~~]

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(I) Failure to post hours of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the

statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device, or failing to transmit complete and accurate data in the manner required by the department.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emission testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report.

(L) Violating a prohibition described in §23.57 of the title (relating to Prohibitions).

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. In addition, to meet all qualifications for the certificate, the certificate holder must:

(1) pass the complete written and demonstration test when required;

(2) submit the certification fee if certification has expired during suspension; and

(3) pay all charges assessed related to the administrative hearing process, if applicable.

§23.63. Informal Hearings; Settlement Conference.

(a) A person who receives notice of the department's intention to deny an application for an inspector certificate, or to suspend or revoke an inspector or to impose an administrative penalty under §23.62 of this title (relating to Violations and Penalty Schedule), may appeal the decision by submitting a request to appeal by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Vehicle Inspection Program website within thirty (30) calendar days after receipt of notice of the department's proposed action. If a written request to appeal is not submitted within thirty (30) calendar days of the date notice was received, the right to an informal hearing or settlement conference, as applicable, or a hearing before the State Office of Administrative Hearings, is waived, and the action becomes final. [~~certificate and seeks an administrative hearing as provided in Texas Transportation Code, §548.407(f) may choose to have an informal, preliminary hearing prior to proceeding to the administrative hearing before the State Office of Administrative Hearings (SOAH). The preliminary hearing will be conducted by telephone, by department personnel, prior to the scheduling of the SOAH hearing.~~]

(b) If the action is based on the person's criminal history, a preliminary, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the proposed action, or issue a written statement of findings to the respondent either upholding or modifying the original proposed action. [~~Following the informal hearing, the hearing officer will issue a written statement of findings to the person at the address on file. Unless the findings result in the dismissal of the matter and rescission of the proposed action, or the applicant or certificate holder accepts the findings and chooses to withdraw the appeal, the department will schedule the administrative hearing before SOAH.~~]

(c) If the proposed action is based on an administrative violation, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone, by agreement of the parties. Following the settlement conference, the parties will execute an agreed order, or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings following a preliminary hearing, or its determination following a settlement conference, may be appealed to the State Office of Administrative Hearings by submitting a request by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Vehicle Inspection Program website, within thirty (30) calendar days after receipt of the findings or determination. If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

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

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CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §36.1

The Texas Department of Public Safety (the department) proposes amendments to §36.1, concerning Definitions. These rule changes are necessary to clarify certain terms and to enhance the department's regulatory oversight of the Metal Recycling Entities Program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and transparency in the administrative oversight of metals recycling entities.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.1. Definitions.
The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

(1) Act--Texas Occupations Code, Chapter 1956.

(2) Advisory letter--An informational notification of an alleged minor violation of statute or administrative rule for which no disciplinary action is proposed.

(3) Applicant--A person who has applied for registration under the Act.

(4) Business owner--A sole proprietor, partner, member, or other individual with a financial interest in the entity.

(5) Commission--The Public Safety Commission.

(6) Controlling interest--More than 50% ownership interest in the entity.

(7) [~~(6)~~] Department--The Texas Department of Public Safety.

(8) [~~(7)~~] Fixed location--A building or structure for which a certificate of occupancy can be issued.

(9) [~~(8)~~] Immediate family member--A parent, child, sibling, or spouse.

(10) [~~(9)~~] Military service member, military veteran, and military spouse--Have the meanings provided in Texas Occupations Code, §55.001.

(11) [~~(10)~~] On-site representative --An individual [~~A person~~] responsible for the day-to-day operation of the location.

(12) [~~(11)~~] Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, an individual, or any other legal entity.

(13) [~~(12)~~] Personal identification document--Has the meanings provided by Texas Occupations Code, §1956.001(8) of the Act.

(14) [~~(13)~~] Program--Texas Metals Program.

(15) [~~(14)~~] Registrant--A person who holds a certificate of registration under the Act.

(16) [~~(15)~~] Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.

(17) [~~(16)~~] Statutory agent--The natural person to whom any legal notice may be delivered for each location.

(18) [~~(17)~~] Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

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

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SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §36.11

The Texas Department of Public Safety (the department) proposes amendments to §36.11, concerning Application for Certificate of Registration. These rule changes are necessary to clarify certain terms and to enhance the department's regulatory oversight of the Metal Recycling Entities Program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater clarity and transparency in the administrative oversight of metal recycling entities.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.11. Application for Certificate of Registration.

(a) A certificate of registration may only be obtained through the department's online application process.

(b) The application for certificate of registration must include, but is not limited to:

(1) Criminal history disclosure of all convictions for the owner with a controlling interest in the business, or if no owner has a controlling interest in the business, for the entity's on-site representative [~~and deferred adjudications for each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application~~];

(2) Proof of ownership and current status as required by the department, including but not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts;

(3) All fees required pursuant to §36.17 of this title (relating to Fees);

(4) A copy of any license or permit required by a county, municipality, or political subdivision of this state in order to act as a metal recycling entity in that county or municipality, issued to the applicant;

(5) Proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training); and

(6) A statutory agent disclosure pursuant to §36.12 of this title (relating to Statutory Agent Disclosure).

(c) Applicants proposing to conduct business at more than one (1) location must complete an application for each location and obtain a certificate of registration for each location. An applicant proposing to conduct business at more than one (1) location is only required to comply with the requirement of subsection (b)(5) of this section for the initial location at which the applicant is [~~they are~~] seeking to conduct business.

(d) A new certificate of registration for a metals recycling entity may not be issued if the applicant's immediate family member's registration as a metals recycling entity, at that same location, is currently suspended or revoked, or is subject to a pending administrative action, unless the applicant submits an affidavit stating the family member who is the subject of the suspension, revocation or pending action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity.

(e) A new certificate of registration may be issued at the same location where a previous owner's registration as a metals recycling entity is currently suspended, [~~pending or currently serving a suspension, revocation, or~~] is subject to a pending administrative action, or was previously revoked, if the applicant submits an affidavit stating the previous owner who is the subject of the suspension, revocation, or other pending administrative action, [~~has no, nor~~] will have no [~~any,~~] direct involvement or influence in the business of the metals recycling entity. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous registration holder is involved in the business of metals recycling entity at that location, the certificate of registration will be revoked pursuant to §36.53 of this title (relating to Revocation of a Certificate of Registration). In addition to the affidavit, when the change of ownership of the metals recycling entity is by lease of the location, the applicant seeking a certificate of registration must provide a copy of the lease agreement included with the application for certificate [~~certification~~] of registration.

(f) The failure of an applicant to meet any of the conditions of subsections (a) - (e) of this section will result in rejection of the application as incomplete.

(g) An applicant for a certificate of registration is not authorized to engage in any activity for which a certificate of registration is required prior to being issued a certificate of registration by the department.

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

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000620
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 424-5848

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SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.34, §36.36

The Texas Department of Public Safety (the department) proposes amendments to §36.34 and §36.36, concerning Practice by Certificate Holders and Reporting Requirements. These rule changes are necessary to clarify certain terms and to enhance the department's regulatory oversight of the Metal Recycling Entities Program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater clarity and transparency in the administrative oversight of metals recycling entities.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which

authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.34. Texas Metals Program Recycler Training.

Before receiving a certificate of registration pursuant to §36.11 of this title (relating to Application for Certificate of Registration) or renewal of certificate of registration pursuant to §36.16 of this title (relating to Renewal of Certificate of Registration), all applicants and registrants, or their on-site representative, must satisfactorily complete the department's Texas Metals Program Recycler Training. A copy of the proof of training for registrants, or their on-site representative, must be maintained at the place of business and available for inspection by anyone authorized to inspect pursuant to §1956.035(b)(2) of the Act.

§36.36. Standards of Conduct.

(a) Pursuant to §1956.035 of the Act, a metal recycling entity, and any individuals acting on behalf of the entity, shall cooperate fully with any investigation or inspection conducted by a peace officer, a representative of the department, or a representative of a county, municipality, or political subdivision that issues a license or permit under §1956.003(b) of the Act.

(b) Pursuant to §1956.035 of the Act, a metal recycling entity shall permit access during normal business hours to a person authorized to inspect.

(c) A metal recycling entity must not purchase, sell, or possess an explosive device, as defined by §1956.001(6-a) of the Act.

(d) If convicted of a disqualifying offense pursuant to §36.55 of this title (relating to Disqualifying Offenses), an applicant or registrant shall notify the department within seventy-two (72) hours of the conviction. Notification shall be made in a manner prescribed by the department.

(e) Any violation of subsection (a) - (d) of this section by a business owner, or on-site representative will be construed as a violation by the registrant.

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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D. Phillip Adkins
General Counsel
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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §§36.51, 36.53, 36.55 - 36.57

The Texas Department of Public Safety (the department) proposes amendments to §§36.51, 36.53, 36.55, 36.56, and new §36.57, concerning Disciplinary Procedures and Administrative Procedures. These rule changes are in part necessary to clarify the scope of the department's regulatory authority, and in part to implement Senate Bill 616, 86th Legislative Session. Senate Bill 616 requires the adoption of procedures for the informal resolution of complaints against metals recycling entities. In addition, changes to §36.55 are intended to implement House Bill 1342, 86th Legislative Session, which amended Occupations Code, §§53.021, 53.022, and 53.023. Other rule changes simplify the rules or enhance the department's regulatory oversight of the Metal Recycling Entities Program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the implementation of legislation, and greater clarity and consistency in the regulation of the metals recycling industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.51. Denial of Application for Certificate of Registration.

(a) The department may deny an application for a certificate of registration if:

(1) The applicant attempts to obtain a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) The applicant has sold, bartered, or offered to sell or barter a certificate of registration;

(3) The applicant or, if applicable, the applicant's on-site representative, is ineligible pursuant to §36.55 of this title (relating to Disqualifying Offenses);

(4) The applicant's certificate of registration was revoked within two (2) years prior to the date of application; or

(5) The applicant operated a metal recycling entity in violation of §1956.021 of the Act and, after notice of the violation, failed to obtain a registration required by the Act.

(b) Upon the denial of an application under this section, an applicant may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings).

§36.53. Revocation of a Certificate of Registration.

(a) The department may revoke a certificate of registration [~~of a person who is registered under the Act~~] if the owner with a controlling interest in the business or, if no owner has a controlling interest in the business, the entity's on-site representative [~~person~~]:

(1) Commits multiple violations of the same type pursuant to §36.52(a) of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration);

(2) Obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(3) Sells, barters, or offers to sell or barter a certificate of registration;

(4) Is convicted of a disqualifying felony or misdemeanor offense pursuant to §36.55 of this title (relating to Disqualifying Offenses); or

(5) Submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings).

§36.55. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration if the applicant the owner with a controlling interest in the business or, if applicable, the entity's on-site representative,[~~registrant, and/or business owner thereof~~] has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined the types of offenses detailed in this subsection directly relate to the duties and responsibilities of metal recycling entities. A conviction for an offense within one (1) or more of the [~~following~~] categories listed in paragraphs (1) - (9) of this subsection may result in the denial of an original or renewal application [~~(initial or renewal)~~] for a certificate of registration or the revocation of a certificate of registration. The Texas Penal Code references provided in this section are for illustrative purposes and are not intended to exclude similar offenses in other state or federal codes. The types of offenses directly related to the duties and responsibilities of metal recycling entities include, but are not limited to:

(1) Arson, Criminal Mischief, and other Property Damage or Destruction (Texas Penal Code, Chapter 28);

(2) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30);

(3) Theft (Texas Penal Code, Chapter 31);

(4) Fraud (Texas Penal Code, Chapter 32);

(5) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36);

(6) Perjury and Other Falsification (Texas Penal Code, Chapter 37);

(7) Any violation of Texas Occupations Code, §1956.038 or §1956.040;

(8) Prohibited Weapon - Explosive Weapon (Texas Penal Code, §46.05(a)(1); and

(9) Component of Explosives (Texas Penal Code, §46.09).

(c) A felony conviction for one of the offenses listed in subsection (b) of this section, a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3(g) or Article 42A.054, is disqualifying for ten (10) years from the date of the conviction[~~, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect~~].

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five (5) years from the date of conviction.

(e) For the purposes of this chapter, all references to conviction are to those for which the judgment has become final.

(f) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a metal recycling entity: [~~A certificate of registration may be revoked for the imprisonment of the registrant following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for an offense that does not relate to the occupation of metal recycling and is disqualifying for five (5) years from the date of the conviction.~~]

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

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation;

(7) evidence the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and

(8) any other evidence relevant to the person's fitness for the certification sought.

(g) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

[(g) The department may consider the factors specified in Texas Occupations Code, §53.022 and §53.023 in determining whether to grant, deny, or revoke any certificate of registration.]

§36.56. Informal Hearings.

(a) A person who receives notice of the department's intention to deny an application for a certificate [certification] of registration, to reprimand, suspend or revoke a certificate of registration, to prohibit the registrant from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, or to impose an administrative penalty under §36.60 of this title (relating to Administrative Penalties), may appeal the decision by submitting a request to appeal by [requesting an informal hearing.]

[(b) The request for hearing must be submitted by] mail, facsimile, or electronic mail, to the department in the manner provided on the department's metals recycling program website within thirty (30) [twenty (20)] calendar days after receipt of notice of the department's proposed action. If a written request to appeal [for a hearing] is not submitted within thirty (30) [twenty (20)] calendar days of the date notice was received, the right to an informal hearing or settlement conference, as applicable, [a hearing] under this section or §36.57 of this title (relating to Hearings Before [before] the State Office of Administrative Hearings) is waived and action becomes final.

(b) If the action is based on the person's criminal history, an informal, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the proposed action, or issue a written statement of findings to the respondent either upholding or modifying the original proposed action.

(c) If the proposed action is based on an administrative violation, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone, by agreement of the parties. Following the settlement conference, the parties will execute an agreed order, or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings resulting from the informal hearing, or its determination following a settlement conference, may be appealed as provided in §36.57 of this title. If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

[(c) An informal hearing will be scheduled and conducted by the department's designee.]

[(d) Following the informal hearing, the hearing officer will issue a written statement of findings to the person at the address on file. The result may be appealed to the State Office of Administrative Hearings as provided in §36.57 of this title.]

§36.57. Hearings Before the State Office of Administrative Hearings.

(a) The department's findings following an informal hearing, or its determination following a settlement conference, may be appealed to the State Office of Administrative Hearings by submitting a request by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Metal Recycling Program website, within thirty (30) calendar days after receipt of the findings or determination.

(b) In a case before State Office of Administrative Hearings, failure of the respondent to appear at the time of hearing shall entitle the department to request from the administrative law judge an order dismissing the case from the State Office of Administrative Hearings docket and to informally dispose of the case on a default basis.

(c) In cases brought before State Office of Administrative Hearings, in the event the respondent is adjudicated as being in violation of the Act or this chapter after a trial on the merits, the department has authority to assess the actual costs of the administrative hearing in addition to the penalty imposed. Such costs include, but are not limited to, investigative costs, witness fees, deposition expenses, travel expenses of witnesses, transcription expenses, or any other costs that are necessary for the preparation of the department's case. The costs of transcriptions and preparation of the record for appeal shall be paid by the respondent.

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 February 14, 2020.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

37 TAC §§36.57 - 36.59

The Texas Department of Public Safety (the department) proposes the repeal of §§36.57 - 36.59, concerning Disciplinary Procedures and Administrative Procedures. The repeal of these rules is proposed in conjunction with other proposed amendments to the rules relating to hearings. The proposed amendments require the renumbering of the rules, and also provide the opportunity to repeal rules that are duplicative of other department-wide rules.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who

are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the implementation of legislation, and greater clarity and consistency in the regulation of the metals recycling industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to *RSD.Rule.Comments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.57. Hearings Before the State Office of Administrative Hearings.

§36.58. Default Judgments.

§36.59. Hearing Costs.

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 February 14, 2020.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.2

The Texas Veterans Commission (commission) proposes to amend §452.2 of Title 40, Part 15, Chapter 452 of the Texas Administrative Code concerning Advisory Committees.

PART I. PURPOSE AND BACKGROUND

The amended rule is proposed to eliminate, pursuant to commission vote, two existing advisory committees, (1) "The Veterans Employment and Training Advisory Committee" and (2) "The Veterans Communication Advisory Committee," and add a committee addressing veterans' needs, to be named "The Veterans Services Advisory Committee."

The proposed amendment is authorized under Texas Government Code §434.010, granting the commission the authority to establish rules, and Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees.

PART II. EXPLANATION OF SECTIONS

§452.2. Advisory Committees.

Pursuant to §452.2(10)(b)(c), Texas Administrative Code, the commission may create or dissolve advisory committees. At the commission's first quarterly meeting (fiscal year 2020) on November 14, 2019, the commission voted to eliminate two of its four advisory committees: the Veterans Employment and Training Advisory Committee and the Veterans Communication Advisory Committee, and add a committee addressing veterans' needs, to be named "The Veterans Services Advisory Committee."

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Jim Martin, Interim Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Anna Baker, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

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

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

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

(4) No fees will be created by the proposed rule amendment.

(5) The proposed rule amendment will not require new regulations.

(6) The proposed rule amendment has no effect on existing regulations.

(7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment has no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V.

STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

The rule amendment is proposed to implement General Appropriations Act, Article I, Texas Veterans Commission Rider IX, 85th Legislature, Regular Session, 2017, which authorizes the commission to reimburse advisory committees. No other statutes, articles, or codes are affected by this proposal.

§452.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) - (10) (No change.)

(b) Veteran Services Advisory Committee. [~~Veterans Employment and Training Advisory Committee.~~]

(1) Purpose. The purpose of the Veteran Services Advisory Committee (VSAC) is to develop recommendations to improve overall services to veterans, their families, and survivors by the TVC. TVC leadership will provide veteran service topics to the committee for analysis and feedback. [~~Purpose. The purpose of the Veterans Employment and Training Advisory Committee is to seek the input of employers to better assist veterans in gaining successful employment and/or training.~~]

(2) Committee member qualifications. The Committee shall be comprised of veterans and/or non-veterans that are interested in significantly improving the quality of life for all Texas veterans, their families, and survivors. [~~Committee member qualifications. Members may include individuals who are recognized authorities in the fields of business, employment, training, rehabilitation or labor or are nominated by veterans' organizations that have a national employment program.~~]

(c) Fund for Veterans' Assistance Advisory Committee.

(1) - (3) (No change.)

[~~(d) Veterans Communication Advisory Committee.~~]

[~~(1) Purpose. The purpose of the Veterans Communication Advisory Committee is to develop recommendations to improve communications with veterans, their families, and the general public regarding the services provided by the Texas Veterans Commission and information on benefits and assistance available to veterans from federal, state, and private entities.~~]

[~~(2) Committee member qualifications. Members may include representatives from the communications industry, state agencies, the Texas National Guard, U.S. Armed Forces reserve components, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.~~]

[~~(e)~~] (d) Veterans County Service Officer Advisory Committee.

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

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

Filed with the Office of the Secretary of State on February 12, 2020.

TRD-202000593
Madeleine Connor
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: March 29, 2020
For further information, please call: (512) 463-3605

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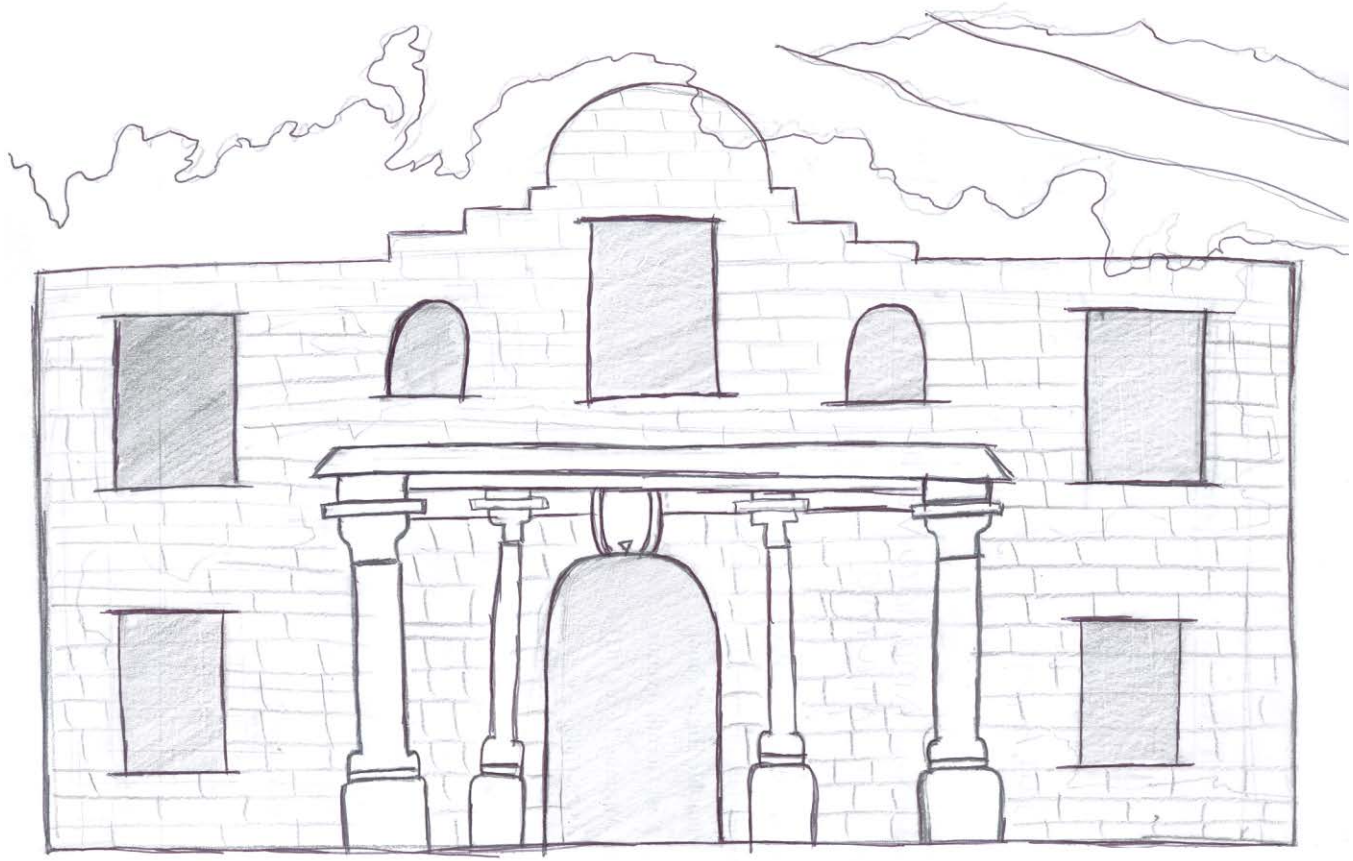

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §33.54, concerning an exemption for registered securities dealers and agents of securities dealers (securities agents) without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8138). The rule will not be republished.

Summary of New Rule

New subsection (a) provides that the terms "agent," "dealer" and "securities" have the meanings assigned by the Texas Securities Act.

New subsection (b) provides that a dealer or an agent of a dealer who, in the course of providing dealer or agent services as to securities, receives or has control over a customer's money or monetary value, is exempt from money transmission licensing requirements if they are: 1) registered and in good standing with the board as a dealer or dealer's agent; 2) only conducting money transmission as defined by the Texas Finance Code to the extent reasonable and necessary to provide securities dealer or securities agent services for contractual customers.

The department regulates money transmission, defined by the Texas Finance Code, §151.301(b)(4) as the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location. A money transmission license is required to engage in the business of money transmission in Texas. See Texas Finance Code, §151.302(a).

Many registered securities dealers and securities agents include money transmission in their business models and as part of the services provided to their clients. Both securities dealers and securities agents, however, are already regulated by, and subject to registration requirements enforced by, the Texas State Securities Board. As such, further regulation by the department would be duplicative to the extent that such persons operate only as securities dealers and securities agents. The department does not intend for this rule to exempt securities dealers and securities agents from money transmission licensing if they perform separate money transmission activities as defined by the Texas Finance Code, unrelated to their operation as securities dealers or agents.

Securities dealers and securities agents whose business includes non-securities related activities, that may constitute money transmission under the Texas Finance Code, should submit their business plan for review and obtain a determination letter from the Texas Department of Banking.

The department received no comments regarding the proposed new rule.

Statutory Authority

The new rule is adopted pursuant to Texas Finance Code, §151.102(a), which authorizes the commission to adopt rules necessary or appropriate to preserve and protect the safety and soundness of money services businesses and protect the interests of purchasers of money services and the public.

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 February 14, 2020.

TRD-202000689
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: March 5, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 475-1301

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.40

The Railroad Commission of Texas adopts amendments to §3.40, relating to Assignment of Acreage to Pooled Development and Proration Units, with changes from the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6647). The amendments are adopted to allow the same surface acreage to be assigned to more than one well in an unconventional fracture treated (UFT) field when mineral ownership is severed at different depths below the surface. Section §3.40(e)(2)(B), (e)(3), and (g) are adopted with changes to address comments as described in detail below. The amendments adopted with a change in subsection (e)(2)(F) include the effective date of these amendments for purposes of

prohibiting field rule applications regarding multiple assignment of acreage in unconventional fracture treated (UFT) fields for two years. The rule will be republished.

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

In December 2013, the Commission recognized the limitations of §3.40 as applied to the Spraberry (Trend Area) Field and signed a final order (O&G Docket No. 7C-0283443) creating a "Rule 40 Exception Field" to allow acreage in the Spraberry to be assigned twice - to a well in the shallow portion of the field and a well in the deep portion. Since 2013, the issue with depth severances has expanded so that more fields are experiencing the same limitations with §3.40. In addition, private lease agreements are creating multiple depth severances such that even allowing duplicate assignment of acreage to wells in shallow and deep portions of a field may still limit development in UFT fields. For example, private lease agreements and other land transactions for a tract may create five or more distinct ownership intervals that vary by depth within a single field. Under current §3.40, the operator could develop one ownership interval. Under existing field rules in the Spraberry, an operator could develop two. In either scenario, at least three intervals could not be developed.

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

The Commission received 12 comments on the rule proposal, five of which were from associations. Elk River Resources, the General Land Office, and Rio Oil and Gas expressed overall support for the amendments. The Commission appreciates this support.

Adopted amendments to §3.40(e)(2) provide that where ownership of the right to drill or produce from a tract in a UFT field is divided horizontally, acreage may be assigned to more than one well provided that the wells having the same wellbore profile are not completed in the same ownership interval. "Divided horizontally" means that ownership of the right to drill or produce has been divided into depth intervals defined by total vertical depth, depth relative to a specific geological contact, or some other discriminator. The Texas Oil and Gas Association (TXOGA) and Pioneer Natural Resources USA, Inc. (Pioneer) commented requesting that the Commission alter the definition of "divided horizontally" to match language in §3.26, which uses "identical royalty interest and working interest ownership in identical percentages." The Commission declines to use language from §3.26 because it does not capture the issue that initiated this rulemaking; namely, in certain fields, private leases with depth severance clauses create more than one ownership interval beneath the surface and §3.40's limitation on acreage assignment was prohibiting production of the additional intervals.

Amendments in §3.40(e)(2)(B) require that within 15 days prior to filing its drilling permit application, an applicant for multiple assignment of acreage shall identify any well, including wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points. The applicant shall then send written notice of its application to the P-5 address of record of each Commission-designated operator of those wells. Apache Corporation (Apache), the Permian Basin Petroleum Association (PBPA), the Texas Alliance of Energy Producers (Alliance), Pioneer, and TXOGA asked for clarification on what action must be taken within 15 days of filing the drilling permit application. To ensure the notice list is based on the most current information, the action that must occur within 15 days of filing is identifying the wells within the 1/2 mile radius. However, because the Commission recognizes the amount of activity occurring in UFT fields, the applicant's responsibility to identify wells within the 1/2 mile radius ends once the applicant sends notice. The applicant does not have a continuing burden to locate wells within the 1/2 mile radius after notice is sent. The Commission adopts §3.40(e)(2)(B) with a change to clarify its intent. The Commission also adopts a change to remove "each" from "each Commission-designated operator" as requested by Pioneer and TXOGA. The new provision reads: "No more than 15 days prior to filing its drilling permit application, the applicant shall identify any well, including any wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points and, upon identification of all applicable wells, send written notice of its application to the P-5 address of record of the Commission-designated operator of the wells determined to fall within the one-half mile radius."

The Alliance, Diamondback Energy (Diamondback), Pioneer, and TXOGA requested clarification on a statement in the proposal preamble regarding how an applicant must locate wells within the 1/2 mile radius. The preamble stated that an applicant must use all available resources, including the Commission's GIS Public Viewer (GIS). The Commission did not intend "all available resources" to require the applicant to conduct research outside of GIS. The intent was to make clear that the responsibility to locate wells and notify operators within the 1/2 mile radius falls on the applicant. The Commission wants to prevent mistakes in notice if GIS is temporarily not working. Commission staff will consult GIS to verify the notice list, but the Commission's intent is that the applicant use GIS as well as information within its possession or actual knowledge to identify wells and notify operators.

Apache, Diamondback, Henry Resources LLC (Henry), the Alliance, and PBPA oppose the 1/2 mile radius notification standard proposed in §3.40(e)(2)(B). The commenters believe 1/2

mile is overly burdensome. Several of these comments stated that Rule 37 (16 TAC §3.37), the Commission's spacing rule, addresses drainage concerns by requiring notice to persons who may be affected by a proposed well and, therefore, additional notice in §3.40 is unnecessary. First, the Commission notes that Rule 37 and applicable field rules governing lease line spacing are not applied horizontally; these rules only require notice to persons within a specified distance from the vertical lease line. Thus, the spacing rules do not require notice to persons who are within the required distance from the wellbore. Second, Commission staff conducted multiple workshops and circulated an informal draft prior to formally proposing the amendments to §3.40. The notice provision underwent numerous revisions throughout this process; however, the 1/2 mile radius requirement was the version with the most support from stakeholders, including Commission staff. Therefore, the Commission declines to adopt the notice provision with amendments.

Relatedly, the Alliance, the Texas Independent Producers and Royalty Owners Association (TIPRO), Pioneer, and TXOGA requested that the Commission clarify the notice requirement in subsection (e)(2)(B) is a courtesy notice. The Commission agrees that the notice is a courtesy notice, meaning that if the person notified objects to the permit, the objection will not prevent the drilling permit application from being approved administratively. Instead, the person objecting may request a hearing to address his or her complaint in accordance with Commission Rule §1.23 of this title, relating to Complaint Proceedings. TXOGA and Pioneer further requested that the Commission create a standard notice form to ensure those noticed understand the notice is a courtesy notice. The Commission appreciates this suggestion but does not propose a standard notice form concurrent with the rule adoption.

Regarding §3.40(e)(2)(B), the Alliance requested new language to clarify that if an applicant provides waivers from those required to be noticed, then the application can be approved administratively. The Commission declines to adopt the suggested change. The Commission notes that because the required notice does not create a right to protest, an application can be approved administratively without waivers. However, when applicable, it is generally Commission practice to allow administrative approval if waivers from affected persons are received.

The Alliance also asked whether re-noticing would be required when a well location is amended. The Commission notes that re-noticing would not be required if a new well appears within the 1/2 mile radius due to the amended location and the operator of the new well already received notice. Re-noticing would be required when a new well appears within the 1/2 mile radius due to the amended location and the operator of that well did not already receive notice. For example, Operator ABC has a well, Well X, located within the 1/2 mile radius as described in §3.40(e)(2)(B), so Operator ABC is provided courtesy notice before the applicant files its drilling permit application. The applicant's well location is then amended and now Well Y and Well 5 also appear in the 1/2 mile radius. Well Y is operated by Operator ABC and Well 5 is operated by Operator 123. Because Operator ABC already received notice due to Well X, the applicant does not have to re-notice Operator ABC. However, because Operator 123 was not noticed prior to the application being filed, the applicant must now notice Operator 123. Nonetheless, the Commission notes that Commission staff will analyze whether new notice is required on a case-by-case basis and may require new notice due to an amended well location in situations other than those described above.

The Texas Land and Mineral Owner Association (TLMA) requested that all unleased mineral interest owners receive notice in addition to operators. The Commission declines to make this change because §3.40 addresses acreage assignment and acreage can only be assigned by an operator.

The Commission received seven comments on §3.40(e)(2)(F). Apache, PBPA, and TIPRO requested that concerns about field rule amendments be limited to the rule preamble and that the two-year prohibition on field rule amendments be removed from the rule language. The Alliance also requested that the two-year prohibition be removed. The Commission declines to remove the two-year prohibition. Commission staff must develop and learn new procedures, including electronic data management systems, to implement the amendments. If, after adoption of amendments to §3.40, field rule amendments were adopted to create different requirements for each field, then Commission staff would have to develop and learn different procedures for each field. Therefore, the Commission adopts a hold on field rule applications to allow Commission staff time to test these procedures and resolve any issues before making piecemeal changes. The Commission also notes that the temporary prohibition will only apply to UFT fields and only to field rule applications addressing multiple assignment of acreage. In addition, operators will still have the opportunity to seek relief from §3.40 by applying for an exception for an individual well or lease.

The Commission agrees with comments from Diamondback, Pioneer, and TXOGA that the provisions in §3.40(e)(2)(F) only govern over field rules existing at the time of the rule amendment, not those field rules to be adopted after the two-year prohibition ends. Further, the prohibition only applies to field rules that address duplicate and/or multiple assignment of acreage.

Finally, Pioneer and TXOGA requested confirmation that all permits granted under existing field rules remain valid and asked the Commission to allow field rule revisions to provide relief for conservation, waste prevention, or correlative rights protection. The Commission confirms that permits granted under existing field rules remain valid. As mentioned above, operators will have the opportunity to seek an exception for an individual well or lease to provide relief for conservation, waste prevention, or correlative rights protection.

The Commission received five comments on §3.40(e)(3), which allows the Commission to require non-confidential information supporting the operator's right to drill or produce in the interval indicated on the operator's drilling permit application. Apache, Diamondback, Henry, and PBPA asked that subsection (e)(3) be removed. TIPRO also opposed the provision, stating that an operator should be able to refuse the request to provide such information and go to hearing instead. The Commission agrees that a request for hearing would be allowed. TIPRO also requested clarification on what type of non-confidential information would be required.

The Commission adopts §3.40(e)(3) with a change to address the comments. Commission staff may request information at the completion stage to ensure the operator completed the well in the interval the operator claims to have the right to drill or produce. Therefore, subsection (e)(3) was revised to clarify that intent.

Apache and PBPA expressed support for §3.40(f). The Commission appreciates this support.

The Commission received three comments on §3.40(g). The Alliance requested that the Commission not limit the opportunity

for an administrative exception to UFT fields because a lease severance can exist in a field regardless of whether the field has the reservoir rock parameters of a UFT field. The Commission declines to provide an administrative exception for fields that do not qualify under §3.40(e). The administrative process for UFT fields presupposes certain reservoir drainage characteristics that are common to UFT fields. An administrative process for a field without those characteristics would include requirements appropriate for that field. As those considerations were not included in the proposal, they are beyond the scope of the rulemaking and cannot be adopted without additional notice.

Pioneer and TXOGA requested that the amendments not limit the opportunity for an exception to non-UFT fields with depth severances. The Commission recognizes that an individual lease exception to §3.40 is currently allowed after notice and opportunity for hearing and the ability to request that exception is not limited to fields where depth severances exist. Part of the intent of §3.40(g) was to formalize the process for obtaining an exception to §3.40 through a hearing and, therefore, the Commission adopts subsection (g) with changes to clarify and augment the existing process.

The Commission received four comments on §3.40(g)(2), which contains the notice requirements when an operator seeks an exception and does not qualify for an exception under §3.40(e). Apache, Henry, and PBPA expressed opposition to the notice requirement and suggested the Commission use the notice requirement from the §3.38 exception provision addressed in §3.86. The Commission agrees that the language from §3.86 is appropriate if an exception is requested for a well in a UFT field that does not qualify for the exception in (e). The Commission adopts (g)(2) with a change to require notice as required by §3.86 if the subject well is in a UFT field. However, because the procedure in §3.40(g) is not limited to horizontal wells or UFT fields, the Commission also adopts (g)(2) with a change to require traditional Rule 38 notice when an operator seeks an exception for a well in a non-UFT field.

Finally, TLMA requested that all unleased mineral interest owners receive notice under subsection (g). The revised notice provision requires notice to unleased mineral interest owners.

The Commission appreciates all the comments and the participation from stakeholders throughout the process of amending §3.40.

The Commission did not receive comments on the following subsections of §3.40 but summarizes the amendments as follows:

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

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

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

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

Adopted amendments to §3.40(e)(2)(F) clarify that upon the effective date of the rule amendments, March 3, 2020, existing field rules that allow assignment of acreage to more than one well in a UFT field are superseded by §3.40. Subparagraph (F) also prohibits field rule applications regarding multiple assignment of acreage in UFT fields until two years after March 3, 2020. Section 3.40(e)(2)(F) is adopted with a change to include the exact effective date of March 3, 2020, which was unknown at the time the amendments were proposed.

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

Adopted new §3.40(g) formalizes the process for obtaining an exception to §3.40. If an operator does not qualify for multiple assignment of acreage under subsection (e), acreage cannot be assigned to more than one well unless the operator is granted an exception after public hearing held after notice to all persons described in subsection (g).

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Failure to timely file the required information on the certified plat or Form P-12 may result in the dismissal of the W-1 application. "Timely" means within three months of the Commission notifying the operator of the need for additional information on the certified plat and/or Form P-12.

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

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

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

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

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

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

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

(d) Multiple assignment of acreage is not permitted, except as provided in subsection (e) of this section. Multiple assignment of acreage is defined as the assignment of the same surface acreage to more than one well in a field. However, this limitation shall not prevent the reformation of development or proration units so long as:

(1) no multiple assignment of acreage occurs; and

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

(e) In unconventional fracture treated (UFT) fields defined in §3.86 of this title (relating to Horizontal Drainhole Wells), multiple assignment of acreage is permissible as follows:

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

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

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

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

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

(B) No more than 15 days prior to filing its drilling permit application, the applicant shall identify any well, including any wells permitted but not yet drilled or completed, that is located within one-half mile of the applicant's proposed wellbore between the first and last take points and, upon identification of all applicable wells, send written notice of its application to the P-5 address of record of the Commission-designated operator of the wells determined to fall within the one-half mile radius. The applicant shall attach to the notice a certified plat that clearly depicts the projected path of the wellbore and the one-half mile radius surrounding the wellbore from the first take point to the last take point. Copies of the notice, service list, and certified plat shall be filed with the drilling permit application.

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

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

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

(F) Field rules that allow assignment of acreage to more than one well in UFT fields are superseded by this rule amendment, as of the effective date of this amendment, March 3, 2020. If, prior to the effective date of this amendment, an operator has assigned acreage to more than one well pursuant to previous field rules, such multiple assignment remains valid. After March 3, 2020, multiple assignment of acreage is not permissible unless the applicant complies with the requirements of this subsection. The Commission will not consider any applications for field rules regarding multiple assignment of acreage in UFT fields until two years after March 3, 2020.

(3) Upon request by the Commission, an operator shall provide non-confidential information verifying that the well was completed in the interval indicated on its drilling permit application.

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

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

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

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

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

(2) If an exception is sought for a well in a UFT field, the operator shall file with its application for an exception the names and mailing addresses of persons described in §3.86(k)(2), relating to Horizontal Drainhole Wells. If an exception is sought for any other well, the operator shall file with its application for an exception the names and mailing addresses of all the operators and unleased mineral interest owners of all adjacent offset tracts, and the operators and unleased mineral interest owners of all tracts nearer to the proposed well than the prescribed minimum lease-line spacing distance. In the event the applicant is unable after due diligence to locate the whereabouts of any person to whom notice is required by this subsection, the applicant shall publish notice of this application pursuant to §1.43 of this title (relating to Notice by Publication).

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

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

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

The agency certifies that legal counsel has reviewed the 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 February 12, 2020.

TRD-202000583
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Effective date: March 3, 2020
Proposal publication date: November 8, 2019
For further information, please call: (512) 475-1295

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.97

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.97, relating to Line Inspection and Safety, without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7272). The rule will not be republished.

The new rule will implement the safety reporting provisions in Public Utility Regulatory Act (PURA) §38.102, which was enacted by the 86th Texas Legislature in House Bill 4150 (HB 4150). HB 4150 also added §§35.010 and 36.066, and amended §38.004. These changes to PURA became effective on September 1, 2019. This new rule is adopted under Project Number 49827.

The commission received written initial comments on the new rule from Texas Electric Cooperatives, Inc. (TEC); Texas Public Power Association (TPPA); Oncor Electric Delivery Company LLC (Oncor); Texas-New Mexico Power Company (TNMP); AEP Texas Inc., Southwestern Electric Power Company, and Electric Transmission Texas, LLC (collectively, AEP Companies); and El Paso Electric Company (EPE). Written reply comments were received from TEC.

There was no request for a public hearing.

General Comments on the Rulemaking

Comments on the Inclusion of Regulatory Asset Language in PURA §§35.010 and 36.066

Every commenter favored the inclusion of language addressing new PURA §§35.010 and 36.066, which authorize affected entities to record the expenses associated with compliance with §38.102 as a regulatory asset for later recovery in rates established by the commission. Commenters requested clarification regarding items eligible for expense recovery and which rate mechanisms are the appropriate vehicle in which to request recovery. TEC suggested that this clarification could be provided in this rule or in a subsequent rulemaking.

Commission Response

The commission declines to address cost recovery in this rulemaking. The statutory provisions provide sufficient authority for electric utilities, electric cooperatives, and municipally owned utilities to record and recover the costs incurred to comply with the new reporting requirements. The commission may address these provisions of PURA in a future rulemaking.

Comments on the Inclusion of Liability Language in PURA 38.102(h)

Oncor and EPE requested that the rule include language addressing PURA §38.102(h) regarding the inadmissibility of the reports provided under 16 TAC §25.97 in criminal or civil proceedings against a reporting utility or the entity's employees, directors, or officers.

Commission Response

The commission declines to adopt the suggested change. PURA § 38.102(h) clearly states the limitations on the use of information reported to the commission as a result of HB 4150 in civil or criminal proceedings. This language is not needed in a commission rule, because it does not apply to commission proceedings and does not concern matters subject to the commission's jurisdiction.

Comments on Due Dates for the Initial Reports

The proposed rule requires affected entities to begin filing three new reports with the commission - an Employee Training Report, a Five-Year Report, and an Annual Report. EPE commented that all three reports required by the proposed rule, which are to be filed initially by May 1, 2020, should go no further back than September 1, 2019.

Five-Year Reports

AEP Companies pointed out that utilities cannot report on a five-year period from September 1, 2019, to December 31, 2019, and commented that the first full five-year period since the passage of HB 4150 would not end until December 31, 2024. They suggested that the first five-year report be prospective only and stated that the five-year report should not address §25.97(e)(1)(A) until May 1, 2025. TNMP commented that the first report should be due May 1, 2026, or that the May 1, 2020, report should be prospective only. TPPA sought clarification that the first five-year report is prospective only and does not include the preceding five-year period before the legislation became law. Similarly, TEC recommended that the initial five-year report to be filed on May 1, 2020, be prospective only. Both AEP Companies and TEC offered language to alter §25.97(e)(2) consistent with their comments.

Annual Reports

TEC and TPPA suggested that language was needed to clarify the timing of the initial report. Both commenters suggested that the initial annual report not be due until May 1, 2021, because an annual report filed May 1, 2020, would be limited, only covering the last third of 2019. TEC also stated that the later deadline would ensure that affected entities were able to put processes in place to track the desired information.

Commission Response

The commission declines to make changes in response to these comments. HB 4150 states that affected entities are, "…not required to submit the report until May 1, 2020." The commission finds that it has the discretion to set a deadline for those reports on or after May 1, 2020. Because of the importance of safety in electric utility operations, the commission concludes that the initial reports should be due May 1, 2020.

Comments on Specific Parts of the Rule

Comments on §25.97(d)(1) (Employee Training Report)

The proposed section requires affected entities to file reports summarizing hazard recognition and National Electrical Safety Code related training programs. EPE commented that additional clarification could be helpful to narrow the type of training programs about which the commission wishes to receive information. EPE suggested that such programs be limited only to those training programs related to vertical clearances.

Commission Response

The commission declines to limit the scope of the training programs that must be reported to the commission as recommended by EPE. PURA §38.102(a) requires summary descriptions of training about hazard recognition related to overhead transmission and distribution facilities and about National Electrical Safety Code requirements for construction of electric transmission and distribution lines. New §25.97(d) mirrors the statutory requirements.

Comments on §25.97(e) (Five-Year Report)

The proposed section requires affected entities to file a report every five years stating what percentage of the utility's overhead transmission system was inspected for vertical clearances in the preceding five years, and what percentage of the system is anticipated to be inspected in the next five years. TEC, TNMP, TPPA, AEP Companies, and EPE commented that requirements for the first five-year report should be modified to recognize that all the information required for the report may not be available by May 1, 2020, the proposed due date. TEC, TNMP, TPPA, and AEP Companies suggested that the first five-year report be made prospective only, meaning that affected entities would provide information about future inspection plans under §25.97(e)(1)(B), but not past inspection activities under §25.97(e)(1)(A). TEC stated that although utilities routinely inspect their systems, some utilities may not have been tracking

their inspection activities in a format that would allow them to report information on safety inspections that occurred before the passage of HB 4150.

Commission Response

The commission declines to make changes to the rule as proposed. While some utilities may find it challenging to provide the required information about past safety inspections under §25.97(e)(1)(A) for the first five-year report, the rule requires only that utilities report the percentage of overhead transmission facilities inspected for compliance. Affected utilities should make efforts to accurately report that information. In addition, the form for reporting this information provides space for a utility to explain the basis for the reported percentage, if it chooses to provide an explanation.

Comments on §25.97(f) (Annual Report)

The proposed section requires affected entities annually to file information regarding injuries, fatalities, non-compliance with PURA, and corrective actions associated with the utility's distribution and transmission system. TEC, TPPA, and EPE commented that, because the bill went into effect on September 1, 2019, the first annual report would not cover a full year of time. Rather, it would cover only the time period from September 1, 2019, to December 31, 2019. Additionally, TPPA commented that clarification was necessary regarding the types of vertical clearances covered in §25.97(f)(1), specifically whether the language meant vertical clearances only over waterways, and whether the language in §25.97(f)(2) applies only to noncompliance with regard to vertical clearances.

Commission Response

The commission acknowledges the effective date of HB 4150, but declines to make changes to the rule as proposed. Affected utilities should make an accurate initial annual report or provide a detailed explanation of the inability to do so and be prepared to provide additional explanation upon request by the commission. With regard to the clarification sought by TPPA, the commission responds that while PURA §38.004(b) addresses clearances over lakes, §38.004(a) is not limited to the type of surface being traversed and applies more generally. Further, concerning the language in §25.97(f)(2), due to the importance of safety and safety reporting, the commission concludes that the broader interpretation - all types of clearances provided for in the National Electrical Safety Code - is appropriate.

All comments, including any not specifically referenced herein, were fully considered by the commission.

Statutory Authority

It is therefore ordered by the Public Utility Commission of Texas that new 16 TAC §25.97, relating to Line Inspection and Safety, be hereby adopted with no changes to the text as proposed.

Cross Reference to Statutes: Public Utility Regulatory Act (PURA) §38.102.

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 February 14, 2020.

TRD-202000670

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 5, 2020
Proposal publication date: November 29, 2019
For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER BB. TEXAS APPLICATION FOR STATE FINANCIAL AID ADVISORY COMMITTEE

19 TAC §§1.9100 - 1.9106

The Texas Higher Education Coordinating Board adopts new rules for Chapter 1, Subchapter BB, §§1.9100 - 1.9104, and 1.9106 of Board rules concerning the establishment of the Texas Application for State Financial Aid Advisory Committee, without changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6188). The rules will not be republished. Section 1.9105 is being adopted with changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6188). The rule will be republished.

The new section to Board rules establishes an advisory committee to assist in adopting procedures to allow a person to complete and submit the application for state financial aid by electronic submission through the website of the state common application form required by Texas Education Code, §51.762. To establish an advisory committee that primarily functions to advise the Board of the THECB, the Board must adopt rules in compliance with Chapter 2110 of the Texas Government Code regarding such committees, including rules governing an advisory committee's purpose, tasks, reporting requirements, and abolishment date.

No comments were received.

The new rules are adopted under Texas Education Code, §61.07762, which provides the Coordinating Board with the authority to establish the TASFA Advisory Committee.

§1.9105. Tasks Assigned the Committee.
Tasks assigned the committee may include:

(1) making recommendations to the Board on the procedures, development, and any associated cost of the online TASFA;

(2) identifying technical and functional revisions of the ApplyTX System regarding the development of the online TASFA;

(3) soliciting input from stakeholders across the state; and

(4) other activities necessary for the development of the online TASFA.

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 February 11, 2020.

TRD-202000576
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Texas Higher Education Coordinating Board
Effective date: March 2, 2020
Proposal publication date: October 25, 2019
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CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3 - 7.8, 7.11, 7.16

The Texas Higher Education Coordinating Board adopts new §7.16 and amendments to §§7.3 - 7.8 and 7.11, concerning Chapter 7, Subchapter A, General Provisions. Sections 7.5 and 7.11 are adopted without changes to the proposed text as published in the October 25, 2019, issue of the Texas Register (44 TexReg 6191) and will not be republished. Sections 7.3, 7.4, 7.6 - 7.8, and 7.16 are adopted with changes to the proposed text as published in the October 25, 2019, issue of the Texas Register (44 TexReg 6191). These sections will be republished below.

Specifically, the new Rule §7.16 moves Financial Protections for Student Tuition and Fees language from §7.7 Institutions Accredited by Board-Recognized Accreditors and §7.8 Institutions Not Accredited by a Board-Recognized Accreditor to create §7.16. Guidelines for potential claim(s), collection and disbursement of surety instruments is then added to create proposed Rule §7.16. The new revisions to Chapter 7, Subchapter A, Rules §§7.3 - 7.8 and 7.11. Specifically, a preponderance of the revisions move Financial Protections for Student Tuition and Fees from §7.7 Institutions Accredited by Board-Recognized Accreditors and §7.8 Institutions Not Accredited by a Board-Recognized Accreditor to create §7.16. The remaining revisions seek to clarify existing rules, including, clarifying the types of institutions which may participate in a reciprocal state exemption agreement under §7.3(33); clarifying to which institutions the Standards for Operation apply in §7.4 and adding the requirement in §7.4(8) that new degree program applications must evaluate the need for the proposed program of study; deleting a closed school previously allowed to have an AOS degree under §7.5(c); correcting cross-referenced subsections under §§7.6 - 7.8; and clarifying that individuals who become new owners are subject to the independent audited financial records requirement.

No comments were received.

The amendments and new section are adopted under the Texas Education Code Sections 61.303 and 61.3075, which provide the Coordinating Board with the authority of granting Certificate of Authorization and Certificate of Authority.

§7.3. Definitions.

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

(1) Academic Record--Any information that is:

(A) directly related to a student's educational efforts;

(B) intended to support the student's progress toward completing a degree program;

(C) regardless of the format or manner in which or the location where the information is held, maintained by an institution for the purpose of sharing among academic officials; and

(D) for purposes of this chapter, an academic record includes a student's educational history, but does not include medical records, alumni records other than educational history, human resources records, or criminal history record information or other law enforcement records.

(2) Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(3) Accrediting Agency--A legal entity recognized by the Secretary of Education of the United States Department of Education as an accrediting agency that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions, including ensuring academic, financial, and operational quality. A Board-recognized Accrediting Agency is any accrediting agency authorized by the Secretary of Education of the United States Department of Education to accredit educational institutions that offer the associate degree or higher, the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from certain provisions of this chapter.

(4) Agent--A person employed by or representing a postsecondary educational institution that does not have a Certificate of Authorization or Certificate of Authority, within or without Texas who:

(A) solicits any Texas student for enrollment in the institution (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas);

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts (AA), the associate of science (AS), the associate of applied arts (AAA), the associate of applied science (AAS), and the associate of occupational studies (AOS) degrees.

(A) Academic Associate Degree Program--A grouping of courses designed to transfer to an upper-level baccalaureate program and that includes sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. An academic associate degree must include at least twenty (20) semester credit hours or thirty (30) quarter credit hours of general education courses. This specifically refers to the associate of arts (AA) and the associate of science degrees (AS).

(B) Applied Associate Degree Program--A grouping of courses designed to lead the individual directly to employment in a specific career and that includes at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. An applied associate degree must include at least fifteen

(15) semester credit hours or twenty-three (23) quarter credit hours of general education courses. This specifically refers to the associate of applied arts (AAA) and the associate of applied science (AAS) degrees. Associate of Occupational Studies (AOS) degrees are only allowed under §7.5 of this chapter.

(6) Board--The Texas Higher Education Coordinating Board.

(7) Board Staff--The staff of the Texas Higher Education Coordinating Board including the Commissioner of Higher Education and all employees who report to the Commissioner.

(8) Career School or College--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the state of Texas or solicits business within the state of Texas, and that is not specifically exempted by Texas Education Code, §132.002 or §7.4 of this chapter (relating to Standards for Operations of Institutions), and:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study is available through classroom instruction, by electronic media, by correspondence, or by some or all, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for career or personal improvement.

(9) Certificate of Approval--The Texas Workforce Commission's approval of career schools or colleges with operations in Texas to maintain, advertise, solicit for, or conduct any program of instruction in this state.

(10) Certificate of Authority--The Board's approval of postsecondary institutions (other than exempt institutions), with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees, while seeking Board-recognized accreditation. Additional conditions, restrictions, or requirements may be placed on a Certificate of Authority pursuant to §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor).

(11) Certificate of Authorization--The Board's acknowledgment that an institution is qualified for an exemption, unless specifically provided otherwise, from certain identified regulations in this subchapter.

(A) A Certificate of Authorization for an institution offering degrees or courses leading to degrees at a physical location in Texas will be issued for the period of time in the institution's current grant of accreditation by its Board-recognized accreditor.

(B) A Certificate of Authorization may be issued as provisional for a 15-month temporary exemption from certain identified regulations in this subchapter based on its main campus' accreditation while seeking final approval for the new Texas-based campus from its Board-recognized accreditor and the Texas Workforce Commission.

(C) An out-of-state institution may be issued a renewable one-year Certificate of Authorization in order to allow students to complete experiential learning experiences in Texas.

(12) Certificate of Registration--The Board's approval of an agent to solicit students on behalf of a private postsecondary educational institution in the state of Texas.

(13) Certification Advisory Council--The Council as established by Board rules Chapter 1, Subchapter H, §§1.135 - 1.141 of this title (relating to Certification Advisory Council).

(14) Change of Ownership or Control--Any change in ownership or control of a career school or college, or a postsecondary educational institution, or an agreement to transfer control of such institution.

(A) The ownership or control of a career school or college or postsecondary educational institution is considered to have changed:

(i) in the case of ownership by an individual, when more than fifty (50) percent of the institution has been sold or transferred;

(ii) in the case of ownership by a partnership or a corporation, when more than fifty (50) percent of the institution or of the owning partnership or corporation has been sold or transferred; or

(iii) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.

(B) A change of ownership or control does not include a transfer that occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(15) Cited--Any reference to an institution in a negative finding or action by an accrediting agency.

(16) Classification of Instructional Programs (CIP) Code--The four (4) or six (6)-digit code assigned to an approved degree program in accordance with the CIP manual published by the U.S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(17) Commissioner--The Commissioner of Higher Education.

(18) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate," "bachelor's," "master's," "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(19) Educational or Training Establishment--An enterprise offering a course of instruction, education, or training that is not represented as being applicable to a degree.

(20) Exempt Institution--A postsecondary educational institution that is fully accredited by and not operating under sanctions imposed by an agency recognized by the Board under §7.6 of this chapter (relating to Recognition of Accrediting Agencies), is defined as a "private or independent institution of higher education" under Texas Education Code, §61.003(15), a career school or college that applies for and is declared exempt under this chapter, an institution that has received approval by a state agency authorizing the institution's graduates to take a professional or vocational state licensing examination administered by that agency as described in Texas Education Code, §61.303(a), or an institution exempted by the Texas Workforce Com-

mission under Texas Education Code, §132.002. Exempt institutions must comply with certain Board rules.

(21) Experiential Learning--Process through which students develop knowledge, skills, and values from direct experiences outside an institution's classrooms. Experiential learning encompasses a variety of activities including, but not limited to, internships, externships, practicums, clinicals, field experience, or other professional work experiences. References to clinicals within this chapter encompasses all site-specific health professions experiential learning. Clinicals include site experiences for medical, nursing, allied health, and other health professions degree programs.

(22) Fictitious Degree--A counterfeit or forged degree or a degree that has been revoked.

(23) Fraudulent or Substandard Degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a Certificate of Authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.12 of this chapter (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a Certificate of Authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.12 of this chapter, determines is not the equivalent of an accredited or authorized degree.

(24) Out-of-State Public Postsecondary Institution--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the state of Texas. For purposes of this chapter, out-of-state public institutions of higher education are considered postsecondary educational institutions.

(25) Person--Any individual, firm, partnership, association, corporation, enterprise, postsecondary educational institution, other private entity, or any combination thereof.

(26) Personally Identifiable Information--Information of a potential, current or former student, including name, address, telephone number, social security number, email address, date of birth, education records, or any other identifying number or information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

(27) Physical Presence--

(A) While in Texas, a representative of the school or a person being paid by the school, who conducts an activity related to postsecondary education, including for the purposes of recruiting students (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas), teaching or proctoring courses including internships, clinicals, externships, practicums, and other similarly constructed educational activities (excluding those individuals that are involved in teaching courses in which there is no physical contact with Texas students or in which visiting students are enrolled), or grants certificates or degrees; and/or

(B) The institution has any location within the state of Texas which would include any address, physical site, telephone number, or facsimile number within or originating from within the boundaries of the state of Texas. Advertising to Texas students, whether through print, billboard, internet, radio, television, or other medium alone does not constitute a physical presence.

(28) Postsecondary Educational Institution--An educational institution which:

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(29) Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code, §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has an agent or representative presence in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(30) Professional Degree--A degree that is awarded for a Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Dental Surgery (D.D.S.), Doctor of Veterinary Medicine (D.V.M.), Juris Doctor (J.D.), and Bachelor of Laws (LL.B.) and their equivalents and foreign cognates.

(31) Program or Program of Study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(32) Protected Term--The terms "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(33) Reciprocal State Exemption Agreement--An agreement entered into by the Board with an out-of-state state higher education agency or higher education system for the purpose of creating a reciprocal arrangement whereby that entity's institutions are exempted from the Board oversight for the purposes of distance education. In exchange, participating Texas public and private or independent institutions of higher education as defined in Texas Education Code, §61.003 and private postsecondary educational institutions as defined in Texas Education Code, §61.302(2) would be exempted from that state's oversight for the purposes of distance education.

(34) Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(35) Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

(36) Sanction--An action taken by an accrediting agency indicating that an institution is out of compliance with its accrediting agency's standards or criteria and may lose such accreditation if the institution does not take action to comply within a certain period of time. Sanctions include, but are not limited to, warnings, notations, probation, or loss of accreditation and equate to a violation of this chapter.

(37) Single Point of Contact--An individual who is designated by an institution as the person responsible for receiving and conveying information between an institution and the Board or Board staff. The Board will direct all communications regarding an institution to the Single Point of Contact. Institutions must inform the Board of changes in the designated Single Point of Contact within 30 days of change.

(38) Substantive Change--Any change in principal location, ownership, or governance of an institution, change in accrediting agency or final action by an accrediting agency changing such institution's status with such accrediting agency, including negative actions taken by the accrediting agency against an institution, change in degree- or credential-level for an approved program, addition of new programs, degrees or credentials offered, change of institution name, or change in United States Department of Education requirements for receipt of federal financial aid based on financial or accreditation status.

(39) Visiting Student--A student pursuing a degree at an out-of-state institution (i.e., home institution) with no physical presence in Texas who has permission from the home institution and a Texas institution, which is either exempt from Board rules or currently in compliance with Board rules, to take specific courses at the Texas institution. The two institutions have an agreement that courses taken at the Texas institution will transfer back to the home institution.

§7.4. Standards for Operation of Institutions.

All non-exempt postsecondary educational institutions that operate within the state of Texas are required to meet the following standards. These standards will be enforced through the Certificate of Authority process for institutions without Board-recognized accreditation. Standards addressing the same principles will be enforced by Board-recognized accrediting agencies under the Certificate of Authorization process. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a Certificate of Authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. Postsecondary educational institutions shall demonstrate compliance with Texas Education Code, Chapter 132 by supplying either a copy of a Certificate of Approval to operate a career school or college or a Letter of Exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board administrators, supervisors, counselors, agents, representatives, and other institutional officers shall reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned advanced degree appropriate for the mission of the institution, preferably, an earned doctorate awarded by an institution accredited by a recognized accrediting agency, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a Certificate of Authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governance. The institution shall have a system of governance that facilitates the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, including students, faculty and staff. If the institution has a governing board consisting of at least three (3) members, and that board focuses on the accomplishment of the institution's mission and purposes, supports institutional effectiveness and integrity, and protects the interests of its constituents, this standard will be considered as met. In the absence of such a governing board, the burden to establish appropriate safeguards within its system of governance and to demonstrate their effectiveness falls upon the institution.

(4) Distinction of Roles. The institution shall define the powers, duties and responsibilities of the governing body and the executive officers. There shall be a clear distinction in the roles and personnel of the chief business officer and the chief academic officer.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations for the current term to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Program Evaluation.

(A) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(B) For all associate degree programs, the evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, qualifications of faculty and administrative personnel, and success of its students.

(C) For applied associate degree programs relating to occupations where state or national licensure is required, graduates must pass the licensing examination at a rate acceptable to the related licensing agency.

(D) Prior to establishing a new degree program, the institution shall evaluate the need for the proposed program of study through survey, research, or other means of measure. The capacity and ability of similar programs at public, private or independent institutions of higher education and private postsecondary educational institutions within Texas to meet market needs shall be considered.

(9) Administrative Resources. The institution has the administrative capacity to meet the daily needs of the administration, faculty and students, including facilities, laboratories, equipment, technology and learning resources that support the institution's mission and programs.

(10) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The academic skills of each entering student may be assessed with an instrument of the institution's choice. The institution may provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a Certificate of Authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Educational Credentials or its successor.

(11) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching in an academic associate, applied associate leading to required state or national licensure, or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member except, as provided by subparagraph (E) of this paragraph, teaching career and technical courses in an applied associate degree program, or career and technical courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency and or at least three (3) years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member, except as provided by subparagraph (E) of this paragraph, teaching general education courses in an applied associate degree program shall have at least a master's degree from an institution accredited by a recognized accrediting agency with at least eighteen (18) graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Except as provided by subparagraph (E) of this paragraph, graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified in subparagraphs (A) - (D) of this paragraph. Such appointments shall be limited and the justification for each such appointment shall be fully documented. The Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(12) Faculty Size. There shall be a sufficient number of faculty holding full-time teaching appointments that are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one (1) full-time faculty member in each program. At the graduate level, there shall be at least two (2) full-time faculty members in each program.

(13) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(14) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed twenty-five (25) percent of all courses.

(B) Academic associate degrees must consist of at least sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. Applied associate degrees must consist of at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours and not more than thirty-six (36) semester credit hours or forty-five (45) quarter credit hours and not more than fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(15) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least twenty (20) semester credit hours or thirty (30) quarter credit hours. Each applied associate degree program shall contain a general education component of at least fifteen (15) semester credit hours or twenty-three (23) quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least twenty-five (25) percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institution's general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a Board-recognized accrediting agency or hold a Certificate of Authority.

(16) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the Advanced Placement program (AP) or the College Level Examination Program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than fifteen (15) semester credit hours or twenty-three (23) quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(17) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection of books, educational material and publications, on-line materials and other resources and with staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Applied associate degree programs shall provide adequate and appropriate resources for completion of course work.

(18) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(19) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student, designation of the major course of study; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in separate secure places. Records of students who are no longer enrolled at the institution for any reason, including graduation, must be maintained in accordance with §7.15 of this chapter (relating to Academic Records Maintenance, Protection, and Repository of Last Resort).

(C) Students in good standing will be provided transcripts upon request, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state and federally guaranteed student loans.

(20) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog. Institutions relying on electronic catalogs must ensure the availability of archived editions in order to serve the needs of alumni and returning students. The catalog must contain, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvi) any disclosures specified by the Board or defined in Board rules.

(C) The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs.

(E) Any special requirements or limitations of program offerings for the students at the Texas location must be made explicit in writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student in good standing shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to the institution's obligation, if any, to enforce with the rules and regulations governing state, and federally guaranteed student loans by temporarily withholding such credentials.

(21) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(22) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters; outline the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board using the student complaint procedures established by Board rules Chapter 1, Subchapter H, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure) and/or the Texas Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(23) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

(24) Learning Outcomes.

(A) An institution must have an objective system of assessing learning outcomes in place for each part of the curriculum and the institution can demonstrate that appropriate learning outcomes are being achieved.

(B) An institution may deviate, for a compelling academic reason, from Standard (12) relating to Faculty Size and Standard (16) relating to Credit for Work Completed Outside a Collegiate Setting, as long as academic objectives are fully met.

§7.6. Recognition of Accrediting Agencies.

(a) Eligibility Criteria--The Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an accrediting agency authorized to accredit educational institutions that offer the associate degree

or higher. Demonstration of authorization shall include clear description of the scope of recognized accreditation.

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education:

(i) Using the U.S. Department of Education classification of instructional programs (CIP) code at the two-digit level, the applicant shall identify all fields of study in which institutions it accredits may offer degree programs.

(ii) Accrediting agencies shall, for each field of study in which an accredited institution may offer degree programs, specify the levels of degrees that may be awarded. Levels must be differentiated at least to the following, as defined in §7.3 of this chapter (relating to Definitions): applied associate degree, academic associate degree, baccalaureate degree, master's degree, first professional degree and doctoral degree. Associate of occupational studies (AOS) degrees are only allowed under §7.5(c) of this chapter (relating to Administrative Injunctions, Limitations, and Penalties).

(iii) Only institutions that qualify as eligible for United States Department of Education Title IV programs as a result of accreditation by the applicant agency will be considered exempt under §7.7 of this chapter (relating to Institutions Accredited by Board-Recognized Accreditors).

(C) Accredits institutions that have legal authority to confer postsecondary degrees as its primary activity:

(i) Accrediting agencies must identify all institutions accredited by the agency that either the majority of the accredited institutions have the legal authority to award postsecondary degrees or that it accredits at least fifty (50) institutions that have the legal authority to award postsecondary degrees.

(ii) An accrediting agency that accredits programs as well as institutions shall demonstrate that either it accredits more institutions than programs or that it has policies, procedures and staff sufficient to address institutional standards of quality in addition to program standards of quality.

(iii) Accrediting agencies must have standards that require all accredited institutions to comply with all applicable laws in the state and local jurisdiction in which they operate and that require accredited institutions to clearly and accurately communicate their accreditation status to the public.

(D) Requires an on-site review by a visiting team as part of initial and continuing accreditation of educational institutions:

(i) Each accrediting agency shall demonstrate, through its documented practices and/or its official policies, that it requires no fewer than three (3) members on a team when conducting initial and continuing accreditation visits, that none have a monetary or personal interest in the findings of the on-site review, that all have professional experience and knowledge that qualifies them to review the institution's compliance with the standards of the agency, and that the combined team experience and knowledge are sufficient to review all applicable standards of the agency.

(ii) Accrediting agencies may conduct site visits for reasons other than initial and continuing accreditation with fewer team members.

(iii) Accrediting agencies shall provide a list of the visiting team members for the five (5) most recently completed on-site reviews. The list shall show name, employer, title of positions held with that employer and the standards for which the individual was responsible in that on-site review.

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board:

(i) Each accrediting agency shall provide the Board its official policy regarding disclosure of information about institutions that are or have been candidates for accreditation and are or have been accredited. Agencies shall provide to the Board, within ten (10) working days, any new information and any requested information about a Texas institution that would be available to the public under that official policy.

(ii) Each accrediting agency shall include in its standards for accreditation of Texas institutions that the institutions disclose publicly and to the Board the number of degrees awarded at each level each year and the number of students enrolled in the fall of each year.

(F) Has sufficient resources to carry out its functions:

(i) Accrediting agencies shall identify the number of on-site reviews conducted during the most recent twelve (12) month period, the number of staff members who participated in those on-site reviews and the maximum number of on-site reviews conducted by any individual staff member. If that maximum number exceeds thirty (30), the agency shall explain how it expects to carry out its function of enforcing its standards on Texas institutions.

(ii) Each accrediting agency shall provide evidence that its ratio of current assets to current liabilities equals or exceeds 1.2.

(iii) Each accrediting agency shall demonstrate that its fees are reasonable for the accreditation services provided.

(2) Recognition--To receive and maintain recognition from the Board, the accrediting agency must, in addition to the items listed in paragraph (1) of this subsection:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews:

(i) Accrediting agencies must have publicly disclosed standards that address at a minimum the following issues: student achievement in relation to the institution's mission; curricula; faculty; facilities, equipment and supplies; fiscal and administrative capacity; student support services; recruiting and admissions practices; academic calendars; catalogs; grading; measures of program length; objectives of the degrees or credentials offered; record of student complaints received by or available to the agency; management and financial control.

(ii) In the application process, the accrediting agency must indicate how its standards address each of the quality assessment categories outlined in clause (i) of this subparagraph which represent the underlying principles described in the institutional standards of §7.4 of this chapter (relating to Standards for Operations of Institutions). Comparison of its standards with the standards in §7.4 of this chapter is required as a means of indicating how its standards meet those principles.

(iii) Each accrediting agency shall provide its policy for periodic reviews of institutions under its accreditation. At a minimum, the accrediting agency must conduct on-site reviews at least every ten (10) years.

(iv) At least ten (10) working days before each scheduled periodic on-site review of a Texas institution, accrediting agencies shall invite the Board staff to participate in the review. Such

participation shall be at no expense to the institution or the accrediting agency.

(v) Within ten (10) working days of an official change in standards, the agency shall notify the Board of those changes.

(vi) By providing a copy of its publicly disclosed policies and procedures, each accrediting agency shall demonstrate that its initial and ongoing reviews and the resultant accreditation decisions are fair and consistent with the available evidence.

(vii) Accrediting agencies that use an advisory body, similar to the Certification Advisory Council described in §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor), shall describe the advisory body's composition and authority. Accrediting agencies that do not use such a body shall describe the process used to ensure that the evidence obtained from reviews results in appropriate accreditation decisions.

(viii) The initial and ongoing reviews shall include an institutional self-evaluation process or a documented alternative process to promote continuous quality improvement.

(ix) Each accrediting agency shall have and publicly disclose its processes for appealing accreditation decisions.

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time. Written evidence may consist of a letter from the chief executive officer of the accrediting agency. Accrediting agencies shall submit the evidence upon notice of continued recognition or upon a change in recognition status, scope or level;

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any investigated complaints concerning a Texas institution where the accrediting agency took official action on issues of non-compliance and the disposition of those complaints;

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority; and

(F) Demonstrate that the ownership and control of the accrediting agency is sufficiently independent to ensure that the accreditation process is conducted in the public interest.

(G) Each time the accrediting agency applies for continued recognition by the Secretary of Education of the United States Department of Education, the accrediting agency must apply for continued recognition by the Coordinating Board. Applications forms will be provided by Board staff. Application for continued recognition must, at a minimum, contain all information required for initial eligibility and recognition by the Coordinating Board under this rule.

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

(1) Once recognized, an accrediting agency retains that recognition unless and until the Board withdraws the recognition. Failure to comply with any of the requirements in this chapter, including failure to comply with information requests during periodic reviews, will be grounds for the Board to consider withdrawing recognition.

(2) Each accrediting agency shall provide its policy for periodic reviews. Periodic review shall be conducted at the time an accrediting agency applies for continued recognition by the Secretary of the United States Department of Education. The Coordinating Board reserves the right to request and review current policies at other times for good cause, including, but not limited to, student complaints, accredited institution complaints, or concerns raised by the United States Department of Education or other state or federal agencies.

(3) The Board may use information provided by parties other than the accrediting agency to assess the accrediting agency's commitment to academic quality and student achievement. The Board will consider any such information in an open, public meeting during which the accrediting agency may challenge the information.

(4) The Board will make any decision to deny recognition of an accrediting agency or to withdraw recognition from an accrediting agency in a public meeting.

(5) An institution operating in Texas as an exempt institution pursuant to §7.7 of this chapter when its recognized accrediting agency loses or voluntarily relinquishes its recognition will have a provisional time period set by the Board, or Board staff as delegated, within which the institution may continue to operate pursuant to the requirements in §7.7(2) and (3) of this chapter.

(6) An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.7. Institutions Accredited by Board-Recognized Accreditors.

An institution which does not meet the definition of an institution of higher education contained in Texas Education Code §61.003, is accredited by a Board-recognized accreditor, and is interested in offering degrees or courses leading to degrees in the State of Texas must follow the requirements in paragraphs (1) - (4) of this section.

(1) Authorization to Offer Degrees or Courses Leading to Degrees in Texas.

(A) Each institution and/or campus location must submit an application for a Certificate of Authorization to offer degree(s) or courses leading to degrees in Texas. The application form for the Certificate of Authorization may be found on the Board's website. The application must contain the following information:

(i) Name of the institution;

(ii) Physical location of campus, or in the case of only providing clinicals or internships in Texas, the physical location of all clinical or internship sites, number of students in clinicals or internships and start and end date of clinicals or internships;

(iii) Name and contact information of the Chief Administrative Officer of the campus and name and contact information of the designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions). In the case of an application based on clinicals or internships, name and contact information of clinical or internship site supervisors;

(iv) Name of Board-recognized accreditor;

(v) Level of degree, degree program name, and CIP code as authorized by the Board-recognized accreditor;

(vi) Documentation of notification to students and potential students of any program which does not make the graduate eligible to take required professional examinations in that field or to practice regulated professions in that field in Texas;

(vii) Dates of accreditation granted by the Board-recognized accreditor.

(I) If the institution or a location in Texas is currently subject to a negative or adverse action by its Board-recognized accreditor which has not resulted in a sanction, the institution must provide documentation explaining the reasons for the action and actions taken to reverse the negative or adverse action.

(II) If the institution or a location in Texas is currently subject to a sanction by its Board-recognized accreditor, the institution must provide documentation explaining the reasons for the action and actions taken to comply with the accrediting agency's standards or criteria, including a timeline for returning to compliance, in order to maintain accreditation.

(III) If the institution applies based on accreditation of its main campus while seeking final approval for the new Texas-based campus from its Board-recognized accreditor and the Texas Workforce Commission, the institution must provide documentation from its accreditor acknowledging that a decision on campus accreditation can be made within fifteen (15) months of the issuance of a provisional Certificate of Authorization.

(viii) Acknowledgement of student complaint procedure, compliance with the institutional accrediting agency's standards for operation of institutions, annual review reporting requirements, substantive change notification, and student data reporting requirements contained in this section, §§1.110 - 1.120 of this title (relating to Student Complaint Procedure), §7.4 of this chapter (relating to Standards for Operation of Institutions), §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes), and §7.13 of this chapter (relating to Student Data Reporting), respectively;

(ix) Texas Workforce Commission Certificate of Approval or a Texas Workforce Commission exemption or exclusion from Texas Education Code, Chapter 132;

(x) Disclosure of most recent United States Department of Education financial responsibility composite score, including applicable academic year for score. If the institution has a score under 1.5, the institution must provide documentation of all actions taken since date of calculation to raise the score.

(xi) Documentation of reserves, lines of credit, or surety instruments that, when combined with tuition and fee receipts, are sufficient to allow the institution to fulfill its educational obligations for the current term to its enrolled students if the institution is unable to continue to provide instruction to its enrolled students for any reason. Such documentation must meet requirements as defined in §7.16 of this subchapter (relating to Financial Protections for Student Tuition and Fees).

(B) Board staff will verify information and accreditation status. Upon determination that an institution is in good standing with its Board recognized accreditor, has sufficient financial resources, and, if applicable, has provided sufficient documentation of correcting accreditation or financial issues, Board staff will provide a Certificate of Authorization to offer in Texas those degrees or courses leading to degrees for which it is accredited. If an institution is only providing clinicals or internships in the state of Texas, a Certificate of Authorization will be issued for the institution to offer in the state of Texas identified clinicals or internships in connection with those degrees or courses leading to degrees for which the institution is accredited. The Certificate of Authorization will be issued to the institution by name, city and state.

(C) Certificates of Authorization are subject to annual review for continued compliance with the Board-recognized accreditor's standards of operation, student complaint processes, financial viability, and accurate and fair representation in publications, advertising, and promotion.

(i) Institutions must submit the following documentation on an annual basis for Board staff review and recommendation to the Board for continuation or revocation of the Certificate of Authorization:

(I) Annual audited financial statements, issued less than one year from time of submission, prepared in accordance with Generally Accepted Accounting Principles by an independent certified public accountant;

(II) Documentation of reserves, lines of credit, or surety instruments that, when combined with tuition and fee receipts, are sufficient to allow the institution to fulfill its educational obligations for the current term to its enrolled students if the institution is unable to continue to provide instruction to its enrolled students for any reason. Institutions under a Certificate of Authorization as of September 1, 2017 are required to provide documentation of reserves, lines of credit, or surety instruments going forward with the 2019 annual compliance review.

(III) Certification that the institution is providing accurate and fair representation in publications, advertising, and promotion, including disclosure to students and potential students of any program which does not make the graduate eligible to take required professional examinations in that field or to practice regulated professions in that field in Texas. The institution shall further certify that it is maintaining any advertising used in Texas for a minimum of five years and shall make any such advertisements available to the Board for inspection upon request.

(IV) An annotated copy of the student catalog or student handbook showing compliance with the principles addressed in §7.4 of this chapter with cross-reference to the operational standards of its institutional accrediting agency;

(V) A copy of the institution's student complaint policy, links to online student complaint procedures and forms, and summary of all complaints made by Texas residents or students enrolled at a Texas-based institution concerning the institution in accordance with §§1.110 - 1.120 of this title. The complaint summary shall include complaints which have been filed, with the institution, its accrediting agency, or the Board within the 12 months prior to the annual review reporting date and shall indicate whether pending or resolved;

(VI) Official statement of current accreditation status and any pending or final actions that change the institution's accreditation status from the institution's Board-recognized accreditor, including changes in degree levels or programs offered approvals, changes in ownership or management, changes in name, and changes in physical location within the 12 months prior to the annual review reporting date;

(VII) Information regarding heightened cash monitoring or other changes that affect students' federal financial aid eligibility through the US Department of Education;

(VIII) Attestation that all documentation submitted is true and correct and continued acknowledgement of student complaint procedure, annual review reporting requirements, substantive change notification, and student data reporting requirements contained herein this section, §§1.110 - 1.120 of this title, §§7.4, 7.11, 7.13, and 7.15 of this chapter, respectively.

(ii) Annual reviews are conducted based on an institution's name and initial date of authorization.

(I) Institutions with names starting with "A" through "O" must submit annual review documentation by January 15 of each year. The Board will review staff recommendations at the annual July Board meeting.

(II) Institutions with names starting with "P" through "Z" must submit annual review documentation by July 15 of each year. The Board will review staff recommendations at the annual January Board meeting.

(III) Institutions that have received their first Certificate of Authorization less than six months from the due date for submission of annual review documentation may wait to submit documentation until the following annual review submission date.

(iii) Prior to making a recommendation to the Board, staff has discretion to conduct a site visit at the institution if warranted by facts disclosed in the annual review documentation. The Board-recognized accreditor will be notified and invited to participate.

(D) Certificates of Authorization for institutions offering degrees or courses leading to degrees at a physical location in Texas, upon Board staff recommendation after annual review, expire at the end of the grant of accreditation by the Board-recognized accreditor.

(i) If a new grant of accreditation is awarded by the Board-recognized accreditor, the Certificate of Authorization may be renewed upon submission of documentation of the new grant of accreditation.

(ii) If an institution changes recognized accreditors, the institution must submit a new application for a Certificate of Authorization.

(E) Certificates of Authorizations based solely on providing clinicals or internships in Texas expire one year from date of issuance.

(i) If clinicals or internships are ongoing in Texas, the Certificate of Authorization based solely on providing clinicals or internships in Texas must be renewed on an annual basis. At least thirty (30) days, but no more than ninety (90) days, prior to the expiration of the current Certification of Authorization, an institution, if it desires renewal, is required to provide updated information regarding the physical location of all clinical or internship sites, number of students in clinicals or internships, and the start and end date of the clinicals or internships.

(ii) The Board shall renew the Certificate of Authorization based solely on providing clinicals or internships in Texas if it finds that the institution has maintained all requisite standards.

(F) Certificates of Authorization for Texas-based campuses which are provisionally-granted based on their main campus' accreditation expire at the end of fifteen (15) months.

(i) If accreditation has not been achieved by the expiration date, the provisionally-granted Certificate of Authorization will be withdrawn, the institution's authorization to offer degrees will be terminated, and the institution will be required to comply with the provisions of §7.8 of this chapter (relating to Institutions Not Accredited by a Board-Recognized Accreditor).

(ii) Subsequent provisionally-granted Certificates of Authorization will not be issued.

(iii) At least ninety (90) days prior to expiration of the certificate, institutions operating under a provisionally-granted Certificate of Authorization must submit either an application for a Certificate of Authorization under this section or an application for a Certificate of Authority under §7.8 of this chapter.

(G) Institutions under an existing Certificate of Authorization must immediately notify the Board if the institution or its main campus becomes subject to a sanction by its Board-recognized accreditor. The institution must provide documentation explaining its current status and actions taken to comply with the accrediting agency's standards or criteria, including a timeline for returning to compliance, in order to maintain accreditation.

(2) Restrictions Placed on Institution under Sanctions by Its Accreditor.

(A) If an institution is under sanctions by its accreditor, limitations appropriate for the sanction shall be placed upon the institution's Certificate of Authorization. Limitations may include, but are not limited to:

(i) Restrictions on adding degree programs to its authorization;

(ii) An increase in the amount of financial reserves, lines of credit or surety instrument required to maintain a Certificate of Authorization; and

(iii) Review every six months, including unannounced site visits.

(B) The Board will notify the institution via letter of all restrictions placed upon its Certificate of Authorization due to its accreditors' sanctions.

(C) The Board will place a notice of all sanctions placed upon an institution via the Board's website.

(D) Restrictions and public notification will be removed upon written documentation from the institution's accreditor that all sanctions have ended.

(3) Grounds for Revocation of any Certificate of Authorization.

(A) Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission.

(B) Institution loses accreditation from Board-recognized accreditor.

(C) Institution's Accreditor is removed from the U.S. Department of Education or the Board's list of approved accreditors.

(i) If the institution's Certificate of Authorization is revoked due to its accrediting agency's removal from the U.S. Department of Education and/or the Board's list of approved accreditors, the Board, or Board staff as delegated, shall set a provisional time period within which institutions may continue to operate, not to exceed any provisional time period set by the United States Department of Education.

(ii) If the institution's Certificate of Authorization is revoked due to its accrediting agency's removal from the U.S. Department of Education or the Board's list of approved accreditors, a request to extend its Certificate of Authorization for the provisional time period set under paragraph (3)(C)(i) of this section, must be submitted to the Commissioner within ten (10) days of publication, by either the U.S. Department of Education or the Board, of such revocation.

(D) Institution fails to comply with data reporting, substantive change notification requirements, or annual review reporting requirements.

(E) Board staff recommends revocation based on deficiencies in compliance with the principles addressed in §7.4 of this chapter as evidenced by lack of compliance with the Board-recognized

accreditor's standards, which are found in annual review documentation and not corrected by the institution upon request by Board staff.

(F) Institution offers degrees for which it does not have accreditor approval.

(4) Process for Removal of Authorization.

(A) Commissioner notifies institution of grounds for revocation as outlined in paragraph (3) of this section unless paragraph (3)(C) of this section applies and the Board sets a provisional time period for compliance.

(B) Upon receipt of the notice of revocation, the institution shall not enroll new students and may only grant or award degrees or offer courses leading to degrees in Texas to students enrolled on the date of notice of revocation until it has either been granted a Certificate of Authority to grant degrees, or has received a determination that it did not lose its qualification for a Certificate of Authorization.

(C) Within ten (10) days of its receipt of the Commissioner's notice, the institution must provide, as directed by Board staff, one or more of the following:

(i) proof of its continued qualification for the exemption; or

(ii) submit data as required by §7.13 of this chapter; or

(iii) a plan to correct any non-compliance or deficiencies which lead to revocation; or

(iv) a plan to seek new Board-recognized accreditation; or

(v) written intention to apply for a Certificate of Authority within 60 days of the notice of revocation; or

(vi) a written teach-out plan, which must be approved by Board staff before implementation.

(D) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(E) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(F) If a determination allows the institution to continue operating, a new Certificate of Authorization will be provisionally-granted. Provisions for continued operation under the new Certificate of Authorization may include, but are not limited to:

(i) requirements to provide updates to Board staff on a monthly basis;

(ii) continued progress toward full compliance with all Board rules and requirements;

(iii) continued progress toward new Board-recognized accreditation, if applicable, or toward approval for a Certificate of Authority; and

(iv) other requirements imposed by the Board.

(G) Certificates of Authorization which are provisionally-granted after a notice of revocation continue only as long as the institution complies with all such provisions.

(5) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003. The agreement shall be in writing, shall be subject to Board approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authorization for an institution is automatically withdrawn when the institution closes. The Commissioner may grant to an institution that has a degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(E) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(F) No new students shall be allowed to enter the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board.

(G) The institution shall transfer all academic records pursuant to §7.15 of this chapter (relating to Academic Records Maintenance, Protection, and Repository of Last Resort).

§7.8. Institutions Not Accredited by a Board-Recognized Accreditor.
An institution which is not accredited by a Board-recognized accreditor and which does not meet the definition of institution of higher education contained in Texas Education Code, §61.003, must follow the Certificate of Authority process in paragraphs (1) - (9) of this section in order to offer degrees or courses leading to degrees in the state of Texas. Institutions are encouraged to contact the Board staff before filing a formal application.

(1) Certificate of Authority Eligibility.

(A) The Board will accept applications for a Certificate of Authority only from those applicants:

(i) proposing to offer a degree or credit courses leading to a degree; and

(ii) which meet one of the following conditions:

(I) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as either a non-degree-granting institution or an exempt institution only offering degrees in religious disciplines for a minimum of two (2) years;

(II) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a degree-granting institution and seeks to open a new campus;

(III) has been legally operating as a degree-granting institution in another state for a minimum of four (4)

years and can verify compliance with all applicable laws and rules in that state; or

(IV) does not meet one of the three previous operational history conditions, but meets additional application and review requirements for its initial application, and agrees to meet additional conditions, restrictions, or reporting requirements during its first two years of operation under a Certificate of Authority. The Certificate of Authority will be issued with written, specific conditions, restrictions, or reporting requirements placed upon the institution.

(V) The Board may not issue a Certificate of Authority for a private postsecondary institution to grant a professional degree, as defined in §7.3 of this title (relating to Definitions) or to represent that credits earned in this state are applicable toward a degree if the institution is chartered in a foreign country or has its principal office or primary educational program in a foreign country.

(B) To be considered by the Board as operating, means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a Certificate of Authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety instrument meeting requirements as defined in §7.16 of this subchapter (relating to Financial Protections for Student Tuition and Fees), including but not limited to, a surety bond, an assignment of a savings or escrow account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions.

(2) Certificate of Authority Application Submission and Requirements.

(A) An applicant must submit an application to the Board to be considered for a Certificate of Authority to offer identified proposed degree(s), and courses which may be applicable toward a degree, in Texas.

(i) Applications must be submitted as an original and a copy in an electronic format as specified by Board staff, and accompanied by the application fee described in paragraph (3) of this section.

(ii) A single desk review of the application will be conducted to determine completeness and readiness for a site team visit.

(iii) The desk review will be done by a reviewer who will act as the site review team leader if the application is deemed complete and ready for a site team visit.

(iv) The desk reviewer, in consultation with Board staff, will make three possible recommendations. Board staff will make a final determination on acceptability of the application based on one of the three recommendations:

(I) The application is determined to be foundationally incomplete in one or more Standards for Operation of Institutions as described in §7.4 of this chapter and not ready for submission. A foundationally incomplete application is one where the Standards for Operation of Institutions have not been met to such a degree that the institution is unlikely to be sustainable or operational.

(II) The application may be resubmitted after incorporating revisions or additions suggested by the reviewer. The revisions or additions must allow the application to meet all Standards for Operation of Institutions.

(III) The application is acceptable and ready for a site review visit.

(v) If the application is foundationally incomplete and not ready for submission, a portion of the application fee, if not expended during the desk review, may be returned and another application may not be submitted for one year from the date of rejection of the foundationally incomplete application.

(B) The application form for the Certificate of Authority may be found on the Board's website.

(C) The Certificate of Authority application must include:

(i) The name and address of the institution;

(ii) The purpose and mission of the institution;

(iii) Documentary evidence of compliance with paragraph (1)(A)(i)-(ii) of this section;

(iv) Documentary evidence of either a Letter of Exemption or Certificate of Approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132;

(v) Documentary evidence of articles of incorporation or other Texas-authorized organizational documents, regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution;

(vi) Identification, by name and contact information, of:

(I) The sponsors or owners of the institution;

(II) The designated Single Point of Contact as defined in §7.3 of this chapter (relating to Definitions);

(III) The chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(IV) Identification of faculty who will, in fact, teach in each program of study, including identification of colleges attended and copies of transcripts for every degree held by each faculty member;

(vii) Information regarding each degree or course leading to a degree which the applicant proposes to offer, including a full description of the proposed degree or degrees to be awarded and the course or courses of study prerequisite thereto;

(viii) A description of the facilities and equipment utilized by the applicant, including, if applicable, all equipment, software, platforms and other resources used in the provision of education via online or other distance education;

(ix) Detailed information describing the manner in which the applicant complies with each of the Standards of Operations of Institutions contained in §7.4 of this chapter (relating to Standards for Operations of Institutions);

(x) If applicable, institutions accredited by entities which are not recognized by the Board must submit all accrediting agency reports and any findings and institutional responses to such reports and findings for ten years immediately preceding the application for a Certificate of Authority. Accreditation by entities which are not recognized by the Board does not allow an institution to offer a degree or courses leading to a degree without a Certificate of Authority to offer such degree or courses;

(xi) A written accreditation plan, identifying:

(I) The Board-recognized accrediting agency with which the applicant intends to apply for institutional accreditation;

(II) The planned timeline for application with and approval by the Board-recognized accrediting agency;

(III) Any contacts already made with the Board-recognized accrediting agency, including supporting documents.

(xii) Any additional information which the board may request.

(D) An applicant that does not meet the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section must be able to demonstrate it is able to meet all Standards for Operation of Institutions found in §7.4 of this chapter through documentation and/or possession of adequate resources. Such demonstration includes, but is not limited to:

(i) Executed agreements with all administration and faculty identified in the application;

(ii) Complete curriculum, assessment, and learning tools for each proposed degree;

(iii) Possession of all listed facilities and resources.

(E) An applicant that does not meet the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section may not apply for a graduate degree or for more than one area of study as part of its initial application for a Certificate of Authority.

(3) Fees Related to Certificates of Authority.

(A) Each biennium the Board shall set the fees for applications for Certificates of Authority, which shall not exceed the average cost, in the preceding two fiscal years, of staff time, review and consultation with applicants, and evaluation of the applications by necessary consultants, including the cost of such consultants.

(B) Each biennium, the Board shall also set the fees for amendments to add additional degree programs to Certificates of Authority.

(C) The Commissioner shall request changes in the fees at a Board quarterly meeting.

(4) Authorization Process.

(A) Based upon the information contained in the application, the Commissioner or his/her designee shall determine whether a site review team is necessary. A site review team is always required for applications for an initial Certificate of Authority.

(B) A site review team shall be composed of no fewer than three (3) members, all of whom have experience and knowledge in postsecondary education. The combined team experience and knowledge shall be sufficient to review all applicable standards of the agency.

(C) An institution must demonstrate it is prepared to be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions.

(D) The conditions found at the institution as of the date of the on-site evaluation review team's visit will provide the basis for the team's evaluation and report, the Certification Advisory Council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a Certificate of Authority.

(E) The site review team shall conduct an on-site review of the institution and prepare a report regarding the institution's ability to meet the Standards of Operation.

(F) The applicant shall have thirty (30) days in which to respond in writing to the report.

(G) The Certification Advisory Council shall review the site review team's report and the applicant's response and make a recommendation regarding disposition to the Board and Commissioner.

(i) If the applicant has no previous operational history as described by paragraph (1)(A)(ii)(I)-(III) of this section, the Council shall make recommendations for additional conditions, restrictions, or reporting requirements during the first two years of operation under a Certificate of Authority.

(ii) If the applicant has previous operational history as described by paragraph (1)(A)(ii)(I)-(III) of this section, the Council may make recommendations for additional conditions, restrictions, or reporting requirements during the first two years of operation under a Certificate of Authority.

(H) The Commissioner shall make his/her recommendation regarding the application to the Board. The Commissioner's recommendation shall be made independent of the Certification Advisory Council's recommendation. The Commissioner may make recommendations for additional conditions, restrictions, or reporting requirements for the time the institution is operating under a Certificate of Authority.

(I) After review of the Commissioner's and Council's recommendations, if the Board approves the application, the Commissioner shall immediately have prepared a Certificate of Authority containing the issue date, a list of the approved degree(s) or courses leading to degrees, and the period for which the Certificate is valid. If applicable, the Certificate of Authority will be issued with any written, specific conditions, restrictions, or reporting requirements placed upon the institution and approved by the Board.

(J) After review of the Commissioner's and Council's recommendations, if the Board does not approve the application, the Commissioner shall immediately notify the applicant of the denial and the reasons for the denial.

(K) Upon denial, an applicant that has met the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section may not reapply for a period of one hundred eighty (180) days from date of denial.

(L) Upon denial, an applicant that has not met the previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section may not reapply for a period of one year from date of denial.

(5) Terms and Limitations of a Certificate of Authority.

(A) The Certificate of Authority to grant degrees is valid for a period of two (2) years from the date of issuance.

(B) Certification by the state of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in subparagraph (A) of this paragraph. Therefore, the institution awarded a Certificate of Authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the state of Texas or agency thereof. Specific

language prescribed by the Commissioner which explains the significance of the Certificate of Authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(C) Institutions holding a Certificate of Authority will be required to:

(i) furnish a list of their agents to the Board;

(ii) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board; and

(iii) report any substantive change, including changes in administrative personnel, faculty, or facilities.

(D) Institutions that, upon application, did not meet one of the three previous operational history conditions described by paragraph (1)(A)(ii)(I)-(III) of this section, in addition to the requirements of subparagraph (C) of this paragraph, are required to provide, at the end of the first year of the initial Certificate of Authority:

(i) Documentary evidence of continued exemption or approval from the Texas Workforce Commission pursuant to Texas Education Code, Chapter 132;

(ii) Current audited financial statements, including a balance sheet, income statement, statement of changes in net worth, and statement of cash flow, updated since issuance of the initial Certificate of Authority;

(iii) Documentation of continued validity of any required financial surety instrument;

(iv) Current enrollment, retention, and graduation numbers for students in all approved degree programs; and

(v) An updated accreditation plan, including any progress made toward obtaining Board-recognized accreditation identified in the initial application or a change in plans to apply for accreditation with another Board-recognized accreditation agency.

(E) Authority to Represent Transferability of Course Credit. Any institution as defined in §7.3 of this chapter, whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(i) the other institution is named in such representation, and is accredited by a Board-recognized accrediting agency or has a Certificate of Authority;

(ii) the courses are identified and documented for which credit is claimed to be applicable to the degree programs at the other institution; and

(iii) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' governing boards in writing, and is filed with the Board.

(6) Amendments to a Certificate of Authority.

(A) An institution seeking to amend its Certificate of Authority to award a new or different degree during the period of time covered by its current Certificate of Authority may file an application for amendment, on forms provided by the Board upon request, subject to the following exceptions:

(i) An institution with no previous operational history described by paragraph (1)(A)(ii)(I)-(III) of this section which has been granted a Certificate of Authority may not apply for an amendment during the period of time covered by its initial Certificate of Authority.

(ii) An institution with operational history described by paragraph (1)(A)(ii)(I)-(III) of this section which has been granted a Certificate of Authority may not apply for an amendment within the first one hundred eighty (180) days after the grant of its initial Certificate of Authority.

(iii) An institution with operational history described by paragraph (1)(A)(ii)(I)-(III) of this section which has been granted a Certificate of Authority with restrictions may not apply for an amendment during the period of time covered by the restricted Certificate of Authority.

(iv) An institution seeking to discontinue a degree program, without closure of the institution, shall assure the continuity of students' education by entering into a teach-out agreement with:

(I) another institution authorized by the Board to hold a Certificate of Authority;

(II) an institution operating under a Certificate of Authorization; or

(III) a public or private institution of higher education as defined in Texas Education Code §61.003.

(v) The teach-out agreement shall be in writing, shall be subject to Board staff approval, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(B) Applications for amendments shall be accompanied by the fee described in paragraph (3) of this subsection for each amendment to an existing degree or for each application to award a new or different degree.

(C) Based upon the information contained in the application for amendment, the Commissioner or his/her designee may utilize an outside consultant, the Certification Advisory Council, or both, to review the application for amendment in order to make a recommendation to the Board.

(D) Upon Board approval that the new or revised degree program meets the required standards, the Board shall amend the institution's Certificate of Authority accordingly.

(E) A change of degree level or additional program would require an amended Certificate of Authority prior to beginning the program.

(7) Renewal of Certificate of Authority.

(A) At least one hundred eighty (180) days, but no more than two hundred ten (210) days, prior to the expiration of the current Certificate of Authority, an institution seeking renewal shall make application to the Board on forms provided upon request. The renewal application must include any applications for or renewal of accreditation by national or regional accrediting agencies. The renewal application shall be accompanied by the fee described in paragraph (3) of this subsection.

(B) The application for renewal of the Certificate of Authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the renewal application must include the institution's record of improvement and progress toward accreditation. Evaluation of the renewal application will include review of compliance with any specific conditions, restrictions, or reporting requirements placed upon the institution during the period of the pre-

vious Certificate of Authority and whether continuation or addition of conditions, restrictions or reporting requirements is warranted.

(C) An institution may be granted consecutive Certificates of Authority for a total grant of no longer than eight (8) years. Absent sufficient cause, at the end of the eight (8) years, the institution must be accredited by a recognized accrediting agency.

(D) Subject to the application and authorization restrictions of this section, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards and is making sufficient progress toward accreditation by a Board-recognized accrediting agency.

(8) Revocation of Certificate of Authority.

(A) Grounds for revocation include:

(i) Institution no longer holds a Certificate of Approval or Letter of Exemption issued by the Texas Workforce Commission; or

(ii) Institution fails to comply with substantive change notification and data reporting requirements as outlined in §7.11 of this chapter (relating to Changes of Ownership and Other Substantive Changes) and §7.13 of this chapter (relating to Student Data Reporting), respectively; or

(iii) Institution offers degrees or courses leading to a degree for which it does not have Board approval; or

(iv) Institution fails to maintain the Standards of Operation as defined in §7.4 of this chapter; or

(v) Failure to comply with the requirement to submit all accrediting agency correspondence, reports, or findings and institutional responses to such correspondence, reports, and findings if an institution is accredited by entities which are not recognized by the Board; or

(vi) Failure to fully comply with any additional conditions, restrictions, or reporting requirements placed upon the institution as part of its current Certificate of Authority.

(B) Process for revocation of Certificate of Authority to offer degrees in Texas:

(i) Board notifies institution of grounds for revocation as outlined in this paragraph via registered or certified mail;

(ii) Within ten (10) days of its receipt of the Commissioner's notice, the institution must either cease and desist operations or respond and offer proof of its continued qualification for the authorization, and/or submit data as required by this chapter;

(iii) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing;

(iv) If a determination under this section is adverse to an institution, it shall become final and binding unless, within forty-five (45) days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(C) Without a valid Certificate of Authority, the institution must immediately cease and desist all operations, including granting degrees, offering courses leading to degrees, receiving payments from students for courses which may be applicable toward a degree, or enrolling new students.

(i) If an institution must cease and desist operations, within forty-five (45) days of the adverse determination becoming final and binding, the institution must assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003.

(ii) The teach-out agreement shall be in writing, shall be subject to Board staff approval prior to implementation, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) Reapplication After Revocation of Certificate of Authority.

(i) The institution will not be eligible to reapply for a period of one hundred eighty (180) days.

(ii) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(iii) The period of time during which the institution does not hold a Certificate of Authority shall not be counted against the eight (8) year period within which the institution must achieve accreditation from a Board-recognized accrediting agency absent sufficient cause, as described in paragraph (7)(C) of this section; the time period begins to run again upon reinstatement.

(9) Closure of an Institution.

(A) The governing board, owner, or chief executive officer of an institution that plans to cease operation in the state of Texas shall provide the Board with written notification of intent to close at least ninety (90) days prior to the planned closing date.

(B) If an institution closes unexpectedly, the governing board, owner, or chief executive officer of the school shall provide the Board with written notification immediately.

(C) If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education as defined in Texas Education Code §61.003. The agreement shall be in writing, shall be subject to Board approval prior to implementation, shall contain provisions for student transfer, and shall specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(D) The Certificate of Authority for an institution is automatically withdrawn as of the date the institution closes. The Commissioner may grant to an institution that has existing degree-granting authority temporary approval to award a degree(s) in a program for which the institution does not have approval in order to facilitate a formal agreement as outlined under this section.

(i) The curriculum and delivery shall be appropriate to accommodate the remaining students.

(ii) No new students shall be admitted to the transferred degree program unless the new entity seeks and receives permanent approval for the program(s) from the Board, or Board staff, as delegated, or the transferred degree program already has such approval.

(E) The institution shall transfer all academic records pursuant to §7.15 of this chapter (relating to Academic Records Maintenance, Protection, and Repository of Last Resort).

§7.16. Financial Protections for Student Tuition and Fees.

The Board is required to ensure Certificate of Authorization and Certificate of Authority institutions maintain reserves, lines of credit, or surety instruments sufficient to allow the institution or person to fulfill its educational obligations of the current term to its enrolled students if the institution or person violates any minimum standard which results in loss of prepaid tuition or fees, or is unable to continue to provide instruction to its enrolled students.

(1) Sufficient Financial Resources Documentation.

(A) Sufficient financial resources may be demonstrated by proof of an adequate reserve, line of credit, or surety instrument. A surety instrument includes but is not limited to, a surety bond, an assignment of a savings or escrow account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of postsecondary institutions.

(B) The documented reserves, lines of credit, or surety instruments must be:

(i) In a form and amount acceptable to the Board;

(ii) In an amount equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum unearned tuition and fees of the institution for a period or term during the applicable academic year for which programs of instruction are offered, including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where an institution's year consists of one or more such periods or terms. Unearned tuition and fees are tuition or fees billed to a student for the current term. No tuition or fee billed for the current term may be considered earned by the institution until the current term has been completed and students have received grades for courses taken during the term;

(iii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of unearned tuition or any fees as a result of violation of any minimum standard or as a result of the institution ceasing operation, provide evidence satisfactory to the Board of its financial ability to provide such indemnification, and list the amount of surety liability the guaranteeing entity will assume; and

(iv) Held in Travis County, Texas, and conditioned to allow only the Board to withdraw funds for the benefit of persons identified in clause (iii) of this subparagraph.

(C) The institution shall include a letter signed by an authorized representative of the institution showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the reserves, lines of credit or surety instrument.

(D) Falsifying surety calculation or surety instrument will be reported to the Attorney General per §7.5(m) of this title (relating to Degree Granting Colleges and Universities Other Than Texas Public Institutions).

(2) Tuition and Fee Recovery.

(A) A Qualifying Event, when used in this subchapter, shall mean an event in which a student or enrollee of the school or his/her parent or guardian is determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of the institution or location ceasing operation.

(B) The Board may withdraw the total amount of reserves, lines of credit, or surety instrument designated for tuition and fee recovery at the time the Board deems the institution or person has violated any minimum standard which results in loss of prepaid tuition or fees, or upon notice that an institution is unable to continue to provide instruction to its enrolled students.

(C) A student, enrollee, parent or guardian is required to apply for an unearned tuition and fee claim in order to be eligible for reimbursement.

(i) Board staff will make available an application claim form. Claim forms must include original signatures to be considered valid.

(ii) Board staff will determine supporting documentation required for each claim and notify the claimant. Supporting documentation may include an enrollment agreement, transcript, report card, loan agreement, cancelled checks, or other documentation which provides information on tuition and fee amounts paid during the current term and the institution's failure to meet minimum standards or continue operations.

(iii) Claims must be initiated by the claimant with a completed application claim form within 12 months of a Qualifying Event. The Board will publish the Qualifying Event date which will begin the 12 months claim period.

(iv) Board staff will review all student tuition and fee recovery claims within 30 days after the claim period ends. Refunds will be made in a timely manner either upon determination all possible valid claims have been filed before the end of the claim period or at the end of the 12 months claim period.

(I) Payments will be made based on verified tuition and fee amounts claimed.

(II) If the amount of institutional reserves, lines of credit, or surety instrument able to be withdrawn by the Board at the time of the Qualifying Event does not allow full payment of tuition and fees to all claimants, Board staff will apportion refunds according to verified tuition and fees claimed as a percentage of total amount claimed versus total amount withdrawn.

(III) If the amount of institutional reserves, lines of credit, or surety instrument withdrawn by the Board at the time of the Qualifying Event is greater than the total claims made during the 12 month claim period, the Coordinating Board reserves the right to retain a portion of the excess funds in order to maintain any student academic records deposited in the Coordinating Board's student academic record repository as a result of the Qualifying Event. Any excess funds withdrawn but not paid in claims or used for student academic record repository maintenance will be returned to the institution, receiver, bankruptcy trustee, or other entity holding institutional funds at the time funds may be returned.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202000571

William Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6523

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER W. TEXAS WORKING OFF-CAMPUS: REINFORCING KNOWLEDGE AND SKILLS (WORKS) INTERNSHIP PROGRAM

19 TAC §§21.700 - 21.707

The Texas Higher Education Coordinating Board adopts new rules for Chapter 21, Subchapter W, §§21.700 - 21.707 of Board rules, concerning the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program, with changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6199). The rules will be republished.

The proposed new section to Board rules establishes the requirements, conditions, and limitations concerning the Texas WORKS Internship Program. This program will provide undergraduate students with paid, off-campus internships to strengthen their marketable skills and support their transition to the workforce.

Although no external comments were received, Coordinating Board staff made non-substantive changes to the proposed rules to address the following:

--Clarification of process and terms;

--Correct grammar; and

--Include required legislative language.

The new rules are adopted under Texas Education Code, §§56.0851 - 56.0857, which provides the Coordinating Board with the authority to establish the Texas WORKS Internship Program.

§21.700. Authority and Purpose of the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

(a) Authority. The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program is authorized by Texas Education Code, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857.

(b) Purpose. The purpose of the program is to provide paid internships funded in part by the State of Texas to enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing and improving career readiness, and strengthening marketable skills.

§21.701. Definitions.

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

(1) Coordinating Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program or Texas WORKS Internship Program--The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

(4) Eligible Employer--An entity that meets the requirements listed in §21.702 of this subchapter.

(5) Financial need--Eligibility guidelines will be determined by the Commissioner or his or her designee.

(6) Half-time student--For undergraduates, enrollment or expected enrollment for the equivalent of six or more semester credit hours per regular semester.

(7) Eligible institution:

(A) an institution of higher education as defined by TEC §61.003 (8); or

(B) a private or independent institution of higher education, as defined by TEC §61.003(15), other than a private or independent institution of higher education offering only professional or graduate degrees.

(8) Eligible Wages--Gross wages paid to an individual student as required by the student's internship.

(9) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(10) Administrative and Financial Capacity--An employer must have legal authority to operate within the state of Texas, be in good standing and have the financial responsibility and administrative capability to administer the Texas WORKS Internship program.

§21.702. Employer Eligibility and Participation Requirements.

(a) In order to participate in the WORKS Internship Program, an employer must:

(1) be a private nonprofit or for-profit entity or a governmental entity;

(2) enter into an agreement with the Coordinating Board;

(3) provide employment to a student placed through the program in nonpartisan and nonsectarian activities that relate to the student's career interests with identifiable marketable skills;

(4) use program positions only to supplement and not supplant positions normally filled by persons who are not eligible to participate in the program, as provided by this subchapter;

(5) provide the entirety of an employed student's wages and employee benefits as well as submit eligible wages to the Coordinating Board for reimbursement;

(6) follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admission or employment;

(7) Demonstrate the administrative and financial capacity to carry out the employer's responsibilities under the program, including the ability to pay full wages and benefits to a student employed through the program.

(A) An employer must demonstrate its ability to properly administer the Texas WORKS Internship program. Administrative capability focuses on the processes, procedures, and personnel used in administering the program and comply with reporting requirements. Eligible employers must have an adequate internal system of checks

and balances, monitoring and evaluating marketable skills, authorizing, and disbursing funds, and reporting data accurately and in a timely manner.

(B) The Coordinating Board determines an employer's financial capacity based on its ability to meet all its financial obligations, meet third-party financial audit requirements, and satisfactorily resolved any past internship performance violations.

(b) An employer is not eligible to participate in the program if the employer is:

(1) a public or private institution of higher education in Texas; or

(2) a career school or college, as defined by TEC §132.001.

§21.703. Employer Agreement.

An agreement between the Coordinating Board and participating employers will establish the roles and responsibilities, base wages, Coordinating Board reimbursement amount, minimum work hours for students employed, compliance with hiring and employment laws, and data reporting terms and conditions.

§21.704. Employer Reimbursement.

All employers will be required to login and have access to the Texas WORKS portal to upload invoices and receive reimbursement for eligible paid student wages.

§21.705. Qualified Internship Opportunity.

(a) A qualified internship position must meet a specific set of criteria, including:

(1) Internship must identify marketable skills to be strengthened or gained;

(2) Internship must be paid;

(3) Internship must be at least 8 weeks in duration;

(4) Intern must work at minimum 12 hours per week;

(5) Intern activities may not be political or sectarian in nature;

(6) No more than 25% of intern's work can be administrative in nature;

(7) No more than 50% of the eligible employer's workforce may be interns; and

(8) Federal work study funds may not be received or used for the internship position.

(b) The Coordinating Board has the right to set a maximum number of internship opportunities per eligible employer.

(c) In the event that available funds are insufficient to award all selected eligible students, a priority determination clause must be included in the employer agreement to govern placement and reimbursement.

§21.706. Student Eligibility.

(a) To be eligible for employment in the Program a person shall:

(1) be a resident of Texas;

(2) be enrolled for at least the number of hours required of a half-time student, and be seeking a degree or certification at an eligible institution the semester prior to the assigned internship;

(3) establish financial need in accordance with Board procedures; and

(4) must be an undergraduate student enrolled in a degree or certificate program at an eligible institution.

(b) A person is not eligible to participate in the Program if the person has not graduated from high school or received the equivalent of a high school diploma.

(c) A person may not be employed in more than one Texas WORKS internship at a time.

§21.707. Records Retention.

All employers participating in the Texas WORKS Internship program shall:

(1) Maintain its records and accounts of all transactions related to intern placement, benefit and wages for not less than seven (7) years after agreement expiration to ensure a full accounting of all funds received, disbursed, and expended by the employer. A participating employer shall immediately make available, upon request of the Coordinating Board, its representative(s), or an auditing entity authorized by law or regulation, all documents and other information related to the Texas Works Internship program.

(2) Immediately make available upon request, records and accounts for inspecting, monitoring, programmatic or financial auditing, or evaluation by the Coordinating Board, its representative(s) and an auditing entity authorized by law or regulation for a period not less than seven (7) years, or whichever is later:

(A) after completion of all services under the Texas Works Internship program; or

(B) after the date of the receipt of the participating employer's final claim for reimbursement or submission of the final expenditure report; or

(C) upon final resolution of all invoice questions related to the Texas Works Internship program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6318

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §§249.12, 249.14, 249.15

The State Board for Educator Certification (SBEC) adopts amendments to §§249.12, 249.14, and 249.15, concerning enforcement actions and guidelines. The amendments to §249.12 and §249.15 are adopted with changes to the proposed text as published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6205) and will be republished. The amendment to §249.14 is adopted without changes to the proposed text as published in the October 25, 2019 issue of the *Texas Register* (44 TexReg 6205) and will not be republished. The adopted amendments to 19 Texas Administrative Code (TAC) Chapter 249, Subchapter B, implement House Bill (HB) 3, Senate Bills (SBs) 1230, 1476, and 37, 86th Texas Legislature, 2019, by reflecting new reporting requirements for superintendents, principals, and directors of public schools and private school administrative officers; adding individuals listed on the registry of persons ineligible to work in public schools to the list of people that must be fired or refused employment by a certified educator; and removing the reference to student loan default as a ground for discipline by the SBEC. The adopted amendments also make technical changes to improve the readability of provisions and to align citations.

REASONED JUSTIFICATION:

Contract Abandonment

In response to public comment, the SBEC took action to remove the proposed amendment to §249.12, Administrative Denial; Appeal, which would have added a new subsection (b)(7) to allow the SBEC to deny the certificate of a person who has abandoned a TEC, Chapter 21, contract within the past 12 months. The SBEC can use its existing authority under §249.15, Disciplinary Action by State Board for Educator Certification, to place restrictions on the issuance of a new certificate for individuals whose certificates expire before the SBEC is able to effectuate a sanction. Conforming technical edits were also made to §249.12.

House Bill 3, 86th Texas Legislature, 2019

Throughout §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition, and §249.15, Disciplinary Action by State Board for Educator Certification, the adopted amendments modify "open-enrollment charter school" to read "charter school" to comport with the changes to TEC, Chapter 21, in HB 3, which now includes all forms of charter entities, whether open-enrollment or otherwise.

HB 3 also creates a registry of persons not eligible for employment in Texas public schools and requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated when there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor. To reflect these new requirements, the adopted amendments add reporting to the commissioner of education under TEC, §22.093, to the list of required reporting for which an educator can be disciplined if the educator fails to report under §249.15(b)(4). The adopted amendments also reflect the registry of persons ineligible to work in public schools in §249.15(b)(12), which allows for SBEC to sanction an educator if the educator hires or fails to fire an employee on the register.

HB 3 also modifies the requirements of TEC, §22.085, which sets out the criminal history that requires a school district, charter school, or shared services arrangement to discharge or refuse to hire an employee or applicant, to parallel TEC, §21.058, by including individuals on deferred adjudication community supervision for which a defendant is required to register as a sex offender. To reflect these modifications, the adopted amendments add language regarding community supervision to the reference to TEC, §22.085, in §249.15(b)(12).

Senate Bills 1230 and 1476, 86th Texas Legislature, 2019

To implement SB 1230, the adopted amendment to §249.14(d) reflects the statute's language requiring a "chief administrative officer of a private school" to report to SBEC rather than to the "director of a private school." This semantic change does not change the meaning of the rule, which already required private school heads to report misconduct to the SBEC.

Similarly, to reflect the creation of misconduct reporting requirements for private school chief administrative officers in SB 1230, the adopted amendments add TEC, §21.0062, to the list of reporting obligations for which the SBEC can discipline a certified educator if the educator fails to comply.

To reflect the requirements of SB 1476 and SB 1230, the adopted amendment to §249.14(d) allows superintendents and directors of public schools not to report evidence of misconduct if the superintendent or director has completed an investigation before the educator resigned and determined that the educator did not engage in misconduct.

Senate Bill 37, 86th Texas Legislature, 2019

To implement SB 37, the adopted amendments remove a reference to student loan default as a ground for discipline by the SBEC in §249.15(f).

The adopted amendments also include technical edits to remove language regarding sanctions for failing to report from §249.14(d) and (e) because this language is redundant with §249.14(h) and makes §249.14(d) and (e) difficult to read.

The adopted amendments also make the list of "Priority 1" conduct match in §249.15(b)(9) and §249.14(k)(1). In response to public comment, the SBEC amended §249.15(b)(9)(L) to add a citation to §247.2(3)(H), the provision addressing appropriate educator-student boundaries in the Educators' Code of Ethics.

The State Board of Education (SBOE) took no action on the review of §§249.12, 249.14, and 249.15 at the January 31, 2020 SBOE meeting.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began October 25, 2019, and ended November 25, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the December 6, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: Texas State Teachers Association (TSTA) commented that there is no statutory basis for the proposed amendment to 19 TAC §249.12(b)(7) that allows the SBEC to administratively deny renewal of the educator's certification following an educator's abandonment of a TEC, Chapter 21, contract within 12 months.

Response: The SBEC disagrees. The SBEC has broad statutory rulemaking authority to "provide for the regulation of educators" and "provide for disciplinary proceedings" as necessary under TEC, §21.041(b)(1) and (7). The SBEC at adoption took ac-

tion to strike the proposed amendment to 19 TAC §249.12(b)(7) to allow for revisions.

Comment: TSTA commented that the language of 19 TAC §249.12(b)(7) should address whether the school district has provided all of the required elements of a contract abandonment report under 19 TAC §249.14(j)(1)-(3).

Response: The SBEC agrees. The SBEC at adoption took action to strike the proposed amendment to 19 TAC §249.12(b)(7) to allow for revisions.

Comment: TSTA commented that TEC, §21.006 and §21.0062, do not require reporting to the commissioner of education and recommended removing those provisions from proposed 19 TAC §249.15(b)(4).

Response: The SBEC disagrees. Adopted §249.15(b)(4) incorporates all the various statutory reporting requirements that the Texas Legislature has put on educators by virtue of their position, from child abuse to educator misconduct. The use of the disjunctive "or" in the adopted rules separates the various authorities to which educators may be required to report under the statutes, and thereby does not require an educator to report to any entity not required by statute.

Comment: TSTA commented that there should be a citation to a definition for "professional educator-student relationships and boundaries" in the proposed amendment to 19 TAC §249.15(b)(9)(L).

Response: The SBEC agrees. To parallel the citation to the provision of the Educators' Code of Ethics that is included in the clause regarding inappropriate communication, the SBEC at adoption approved a change to include the language "as described in §247.2(3)(H) of this title."

Comment: An individual commented that the SBEC should not remove the reference to student loan default from 19 TAC §249.15(f).

Response: The SBEC disagrees. The adopted revision reflects a change in the law from SB 37, 86th Texas Legislature, 2019, which prohibits the SBEC from taking disciplinary action against an educator for default on a student loan.

Comment: Texas Classroom Teachers Association commented in support of the proposed amendment to 19 TAC §249.12(b)(7).

Response: The SBEC agrees.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.006(a), (b), (c), (c-1), and (c-2), as amended by House Bill (HB) 3 and Senate Bill (SB) 1476, 86th Texas Legislature, 2019, which requires the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the State Board for Educator Certification (SBEC) within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated when there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct; TEC, §21.006(b-2), as amended by HB 3, 86th Texas Legislature, 2019, which requires a principal of a school district, district of innovation, or charter school to notify the superintendent within seven days when an educator is terminated or resigns, and there is evidence that the educator engaged in misconduct; TEC, §21.006(f) and (g), which give the SBEC rulemaking authority to implement TEC, §21.006; TEC, §21.006(g-1), as added by HB 3, 86th Texas Legislature, 2019, which requires the SBEC to develop and maintain an internet portal through which a superintendent or director can file a report confidentially and securely; TEC, §21.006(i), as amended by HB 3, 86th Texas Legislature, Regular Session, 2019, which gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under TEC, §21.006; TEC, §21.0062, added by SB 1230, 86th Texas Legislature, 2019, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated when there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records; requires that the SBEC give the educator notice and an opportunity to show cause; requires that the SBEC limit the amount of time the notice can appear on the educator's certification; and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that Texas Education Agency (TEA) staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581(a), as amended by SB 1230, 86th Texas Legislature, 2019, which gives the SBEC authority to sanction the educator certification of person who assists another person in obtaining employment at a school district, private school, or open-enrollment charter school when the certified educator knew the other person had previously engaged in sexual misconduct with a minor or student in violation of the law; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearing house and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, as amended by HB 3, 86th Texas Legislature, 2019, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to refuse to hire those that have certain criminal history; TEC, §22.087, which requires superinten-

dents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangement to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearing house; TEC, §22.092, as added by HB 3, 86th Texas Legislature, 2019, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, as added by HB 3, 86th Texas Legislature, 2019, which requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated when there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.058(d-1) and (e), which set out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; Texas Family Code (TFC), §261.308(d) and (e), which requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), as amended by SB 1231, 86th Texas Legislature, 2019, which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), as amended by SB 1342, 86th Texas Legislature, 2019, which allows the SBEC to suspend or revoke an educator's certificate, or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, as amended by SB 1342, 86th Texas Legislature, 2019, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, as amended by SB 1342, 86th Texas Legislature, 2019, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, TGC, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, as amended by SB 1342, 86th Texas Legislature, 2019, which requires that the SBEC notify a license holder or applicant after denying, suspending or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, as amended by SB 37, 86th Texas Legislature, 2019, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and Every Student Succeeds Act (ESSA), 20 United States Code (USC), §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement TEC, §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), as amended by HB 3 and SB 1476, 86th Texas Legislature, 2019, (f), (g), (g-1), as added by HB 3 and SB 1476, 86th Texas Legislature, 2019; and (i), as amended by HB 3, 86th Texas Legislature, 2019; 21.0062, as added by SB 1230, 86th Texas Legislature, 2019; 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 22.082; 22.0831; 22.085, as amended by HB 3, 86th Texas Legislature, 2019; 22.087; 22.092, as added by HB 3, 86th Texas Legislature, 2019; and 22.093, as added by HB 3, 86th Texas Legislature, 2019; TGC, §411.090 and §2001.058(e); TFC, §261.308(d) and (e) and §261.406(a) and (b), as amended by SB 1231, 86th Texas Legislature, 2019; TOC, §§53.021(a), as amended by SB 1342, 86th Texas Legislature, 2019; 53.022 and 53.023, as amended by SB 1342, 86th Texas Legislature, 2019, 53.024, 53.025, 53.051, as amended by SB 1342, 86th Texas Legislature, 2019, 53.052, and 56.003, as amended by SB 37, 86th Texas Legislature, 2019; and the ESSA, 20 USC, §7926.

§249.12. Administrative Denial; Appeal.

(a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.

(b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:

(1) the person filed a fraudulent application;

(2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;

(3) the person has committed an act that would make them subject to required revocation under the Texas Education Code, §21.058;

(4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);

(5) the person has engaged in conduct or committed a crime or an offense that:

(A) demonstrates that the person lacks good moral character;

(B) demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or

(C) constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or

(6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the State Board for Educator Certification or the TEA staff.

(c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it to the person whose application or request has been administratively denied. The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or

by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.

(d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.

(e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

§249.15. Disciplinary Action by State Board for Educator Certification.

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

(1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;

(2) issue an inscribed or non-inscribed reprimand;

(3) suspend a certificate for a set term or issue a probated suspension for a set term;

(4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;

(5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials; or

(6) impose an administrative penalty of $500-$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1) the person has conducted school or education activities in violation of law;

(2) the person is unworthy to instruct or to supervise the youth of this state;

(3) the person has violated a provision of the Educators' Code of Ethics;

(4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;

(5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);

(6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;

(7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);

(8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);

(9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) state assessment testing violations;

(K) deadly conduct; or

(L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

(A) offenses involving moral turpitude;

(B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, dis-

tribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) offenses involving school property or funds;

(E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felony offenses involving driving while intoxicated (DWI);

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;

(13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;

(14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or

(15) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection

may be subject to any of the sanctions provided by subsection (a) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: March 5, 2020
Proposal publication date: October 25, 2019
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.7

The Texas State Board of Pharmacy adopts amendments to §281.7, concerning Grounds for Discipline for a Pharmacist License. These amendments are adopted with minor punctuation changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 68). The rule will be republished.

The amendments remove failing to repay a student loan as a ground for discipline of a pharmacist license, in accordance with SB 37.

The board received one comment in support of the amendments from Craig Chapman, R.Ph.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.7. Grounds for Discipline for a Pharmacist License.

(a) For the purposes of the Act, §565.001(a)(2), "unprofessional conduct" is defined as engaging in behavior or committing an act that fails to conform with the standards of the pharmacy profession, including, but not limited to, criminal activity or activity involving moral turpitude, dishonesty, or corruption. This conduct shall include, but not be limited to:

(1) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription;

(2) dispensing a prescription drug order pursuant to a prescription from a practitioner as follows:

(A) the dispensing of a prescription drug order not issued for a legitimate medical purpose or in the usual course of professional practice shall include the following:

(i) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature; or

(ii) dispensing controlled substances or dangerous drugs when the pharmacist knows or reasonably should have known that the controlled substances or dangerous drugs are not necessary or required for the patient's valid medical needs or for a valid therapeutic purpose;

(B) the provisions of subparagraph (A)(i) and (ii) of this paragraph are not applicable for prescriptions dispensed to persons with intractable pain in accordance with the requirements of the Intractable Pain Treatment Act, or to a narcotic drug dependent person in accordance with the requirements of Title 21, Code of Federal Regulations, §1306.07, and the Regulation of Narcotic Drug Treatment Programs Act;

(3) delivering or offering to deliver a prescription drug or device in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules promulgated pursuant to these Acts;

(4) acquiring or possessing or attempting to acquire or possess prescription drugs in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules adopted pursuant to these Acts;

(5) distributing prescription drugs or devices to a practitioner or a pharmacy not in the course of professional practice or in violation of this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted pursuant to these Acts;

(6) refusing or failing to keep, maintain or furnish any record, notification or information required by this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules adopted pursuant to these Acts;

(7) refusing an entry into any pharmacy for any inspection authorized by the Act;

(8) making false or fraudulent claims to third parties for reimbursement for pharmacy services;

(9) operating a pharmacy in an unsanitary manner;

(10) making false or fraudulent claims concerning any drug;

(11) persistently and flagrantly overcharging for the dispensing of controlled substances;

(12) dispensing controlled substances or dangerous drugs in a manner not consistent with the public health or welfare;

(13) failing to practice pharmacy in an acceptable manner consistent with the public health and welfare;

(14) refilling a prescription upon which there is authorized "prn" refills or words of similar meaning, for a period of time in excess of one year from the date of issuance of such prescription;

(15) engaging in any act, acting in concert with another, or engaging in any conspiracy resulting in a restraint of trade, coercion, or a monopoly in the practice of pharmacy;

(16) sharing or offering to share with a practitioner compensation received from an individual provided pharmacy services by a pharmacist;

(17) obstructing a board employee in the lawful performance of his or her duties of enforcing the Act;

(18) engaging in conduct that subverts or attempts to subvert any examination or examination process required for a license to practice pharmacy. Conduct that subverts or attempts to subvert the pharmacist licensing examination process includes, but is not limited to:

(A) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the board or questions contained in a question pool of any examination administered by the board;

(B) copying or attempting to copy another candidate's answers to any questions on any examination required for a license to practice pharmacy;

(C) obtaining or attempting to obtain confidential examination materials compiled by testing services or the board;

(D) impersonating or acting as a proxy for another in any examination required for a license to practice pharmacy;

(E) requesting or allowing another to impersonate or act as a proxy in any examination required for a license to practice pharmacy; or

(F) violating or attempting to violate the security of examination materials or the examination process in any manner;

(19) violating the provisions of an agreed board order or board order;

(20) dispensing a prescription drug while not acting in the usual course of professional pharmacy practice;

(21) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, the Controlled Substances Act, or rules adopted pursuant to those Acts;

(22) using abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member's or employee's lawful duties;

(23) failing to establish or maintain effective controls against the diversion or loss of controlled substances or dangerous drugs, loss of controlled substance or dangerous drug records, or failing to ensure that controlled substances or dangerous drugs are dispensed in compliance with state and federal laws or rules, by a pharmacist who is:

(A) a pharmacist-in-charge of a pharmacy;

(B) a sole proprietor or individual owner of a pharmacy;

(C) a partner in the ownership of a pharmacy; or

(D) a managing officer of a corporation, association, or joint-stock company owning a pharmacy. A pharmacist, as set out in subparagraphs (B) - (D) of this paragraph, is equally responsible with an individual designated as pharmacist-in-charge of such pharmacy to ensure that employee pharmacists and the pharmacy are in compliance with all state and federal laws or rules relating to controlled substances or dangerous drugs;

(24) failing to correct the issues identified in a warning notice by the specified time;

(25) being the subject of civil fines imposed by a federal or state court as a result of violating the Controlled Substances Act or the Dangerous Drug Act;

(26) selling, purchasing, or trading or offering to sell, purchase, or trade prescription drug samples; provided, however, this paragraph does not apply to:

(A) prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's outdated drugs;

(B) prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(C) prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(i) the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(ii) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3), or by a city, state or county government; and

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity;

(27) selling, purchasing, or trading or offering to sell, purchase, or trade prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3);

(D) provided that subparagraphs (A) - (C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (C) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules; or

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law;

(28) selling, purchasing, or trading, or offering to sell, purchase, or trade:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date;

(29) failing to respond and to provide all requested records within the time specified in an audit of continuing education records under §295.8 of this title (relating to Continuing Education Requirements); or

(30) allowing an individual whose license to practice pharmacy, either as a pharmacist or a pharmacist-intern, or a pharmacy technician/trainee whose registration has been disciplined by the board, resulting in the license or registration being revoked, canceled, retired, surrendered, denied or suspended, to have access to prescription drugs in a pharmacy.

(b) For the purposes of the Act, §565.001(a)(3), the term "gross immorality" shall include, but not be limited to:

(1) conduct which is willful, flagrant, and shameless, and which shows a moral indifference to standards of the community;

(2) engaging in an act which is a felony;

(3) engaging in an act that constitutes sexually deviant behavior; or

(4) being required to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

(c) For the purposes of the Act, §565.001(a)(5), the terms "fraud," "deceit," or "misrepresentation" in the practice of pharmacy or in seeking a license to act as a pharmacist shall be defined as follows:

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another.

(2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another.

(3) "Misrepresentation" means a manifestation by words or other conduct which is a false representation of a matter of fact.

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 February 14, 2020.

TRD-202000619
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: January 3, 2020
For further information, please call: (512) 305-8010

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22 TAC §281.9

The Texas State Board of Pharmacy adopts amendments to §281.9, concerning Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 71). The rule will not be republished.

The amendments remove failing to repay a student loan as a ground for discipline of a pharmacy technician or a pharmacy technician trainee registration, in accordance with SB 37.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Executive Director
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SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.66

The Texas State Board of Pharmacy adopts amendments to §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 72). The rule will not be republished.

The amendments remove arrests as an item the board may consider in determining the reinstatement of an applicant's previously revoked or canceled license or registration, in accordance with SB 1217.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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22 TAC §281.69

The Texas State Board of Pharmacy adopts new rule §281.69, concerning Automatic Denial or Revocation. The new rule is adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 73). The rule will be republished.

The new rule provides for the automatic denial of a pharmacist licensure application or revocation of a pharmacist license for certain criminal offenses, in accordance with HB 1899.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.69. Automatic Denial or Revocation.

(a) Notwithstanding subsection (c) of this section, as required in Texas Occupations Code, §§108.052 and 108.053, the board shall deny an application for licensure as a pharmacist by or immediately upon receiving notification as specified in §108.053(b) revoke the pharmacist license of a person who:

(1) is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or

(3) has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense:

(A) under Penal Code, §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;

(B) committed:

(i) when the applicant held a license as a health care professional in this state or another state;

(ii) in the course of providing services within the scope of the applicant's license; and

(4) in which the victim of the offense was a patient of the applicant.

(b) As specified in Texas Occupations Code, §108.054, a person whose license application is denied under this subsection:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by subsections (a)(2) or (3) of this section may reapply for a license if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may reapply for a license after the expiration of the period for which the person is required to register.

(c) As specified in Texas Occupations Code, §108.055, a person whose license is revoked under this subsection:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by subsections (a)(2) or (3) of this section may apply for reinstatement of the license if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may apply for reinstatement of the license after the expiration of the period for which the person is required to register.

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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22 TAC §281.70

The Texas State Board of Pharmacy adopts new rule §281.70, concerning Surety Bond. The new rule is adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 74). The rule will not be republished.

The new rule specifies that the board may require a surety bond if an investigation of a pharmacy involves section 565.002(a)(7) or (10) of the Pharmacy Act, in accordance HB 3496.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy adopts amendments to §291.1, concerning Pharmacy License Application. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 75). The rule will not be republished.

The amendments clarify that an applicant for a pharmacy license must submit a sworn disclosure statement, in accordance with HB 3496, and correct a grammatical error.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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22 TAC §291.3

The Texas State Board of Pharmacy adopts amendments to §291.3, concerning Required Notifications. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 76). The rule will not be republished.

The amendments clarify that notification to the board of a change of managing officer shall include an updated sworn disclosure statement, in accordance with HB 3496, and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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22 TAC §291.4

The Texas State Board of Pharmacy adopts new rule §291.4, concerning Sworn Disclosure Statement. The new rule is adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 79). The rule will not be republished.

The new rule creates a requirement for a pharmacy license applicant to submit a sworn disclosure statement, in accordance with HB 3496.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §291.14

The Texas State Board of Pharmacy adopts amendments to §291.14, concerning Pharmacy License Renewal. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 80). The rule will not be republished.

The amendments add a requirement to submit a sworn disclosure statement, in accordance with HB 3496, and correct a grammatical error.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 81). The rule will be republished.

The amendments remove an outdated reference to the Department of Public Safety and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedules II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped signatures may not be used.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense prescription drug orders for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedules III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedules III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must

be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order, including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Notwithstanding subparagraph (A) of this paragraph, a pharmacist may dispense a quantity less than indicated on the original prescription drug order at the request of the patient or patient's agent.

(C) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(D) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(E) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(F) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) the name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) the address of the patient; provided, however, that a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) the name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped, and if for a controlled substance, the DEA registration number of the practitioner;

(iv) the name and strength of the drug prescribed;

(v) the quantity prescribed numerically, and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic; or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) the intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) the date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code:

(I) the name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) the address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the dispensing pharmacist;

(iii) the initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) the quantity dispensed, if different from the quantity prescribed;

(v) the date of dispensing, if different from the date of issuance; and

(vi) the brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(C) Prescription drug orders may be utilized as authorized in Title 40, Part 1, Chapter 19 of the Texas Administrative Code.

(i) A prescription drug order is not required to bear the information specified in subparagraph (A) of this paragraph if the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital). Such prescription drug orders must contain the following information:

(I) the full name of the patient;

(II) the date of issuance;

(III) the name, strength, and dosage form of the drug prescribed;

(IV) directions for use; and

(V) the signature(s) required by 40 TAC §19.1506.

(ii) Prescription drug orders for dangerous drugs shall not be dispensed following one year after the date of issuance unless the authorized prescriber renews the prescription drug order.

(iii) Controlled substances shall not be dispensed pursuant to a prescription drug order under this subparagraph.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (l) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or non-prescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) (relating to Operational Standards) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or manmade disasters. If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his or her professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program:

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patient or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and Schedules IV and V controlled substances. Schedules II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug reg-

imen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records, for ensuring that such data processing system can produce the records outlined in this section, and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensing (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide online retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy using a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded, or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for online data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist, by a pharmacist to a pharmacist-intern, or by a pharmacist-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, and if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, the name, address, DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or indicate in the prescription record that the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions), and the following:

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining, and if a controlled substance, the date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions), and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided, however, that during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone;

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes;

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order;

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred; and

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met:

(i) The original prescription is voided and the pharmacies' data processing systems store all the information as specified in paragraphs (5) and (6) of this subsection;

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records; and

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation, including the formula, unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule II controlled substance, the following is applicable:

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug Enforcement Administration.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee who is involved in the dispensing process, in the pharmacy's data processing system (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) copy 3 of DEA order forms (DEA 222) that have been properly dated, initialed, and filed, all copies of each unaccepted or defective order form and any attached statements or other documents, and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;

(3) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled substances listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(9) a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to the DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories that shall be maintained at the pharmacy;

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location;

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records; and

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist consults a prescriber as described in this section, the pharmacist shall document such occurrences on the hard copy or in the pharmacy's data processing system associated with the prescription and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if the information is recorded on the hard copy prescription.

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 February 14, 2020.

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Texas State Board of Pharmacy
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Proposal publication date: January 3, 2020
For further information, please call: (512) 305-8010

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CHAPTER 295. PHARMACISTS

22 TAC §295.9

The Texas State Board of Pharmacy adopts amendments to §295.9, concerning Inactive License. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 91). The rule will not be republished.

The amendments add a requirement for one hour of continuing education on pain management as specified in section 481.0764 of the Texas Controlled Substances Act, and remove a requirement for one hour of continuing education on opioid abuse.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §295.13

The Texas State Board of Pharmacy adopts amendments to §295.13, concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 93). The rule will not be republished.

The amendments specify the circumstances under which physician delegation to a pharmacist of specific acts of drug therapy management may occur, in accordance with SB 1056.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000683
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2020
Proposal publication date: January 3, 2020
For further information, please call: (512) 305-8010

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.3

The Texas State Board of Pharmacy adopts amendments to §315.3, concerning Prescriptions - Effective September 1, 2016. These amendments are adopted without changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 95). The rule will not be republished.

The amendments remove the effective date from the short title and add a requirement for a person dispensing a Schedule II controlled substance prescription to provide written notice on the safe disposal of controlled substance prescription drugs, in accordance with HB 2088.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000657
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: March 5, 2020
Proposal publication date: January 3, 2020
For further information, please call: (512) 305-8010

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22 TAC §315.16

The Texas State Board of Pharmacy adopts new rule §315.16, concerning Patient Access to Prescription Monitoring Program Prescription Record. The new rule is adopted with changes to the proposed text as published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 97). The rule will be republished.

The new rule establishes the policy and procedures for a patient or the patient's legal guardian to obtain a copy of the patient's Prescription Monitoring Program prescription record, in accordance with HB 3284.

The board received a comment in support of the amendments from Craig Chapman, R.Ph. Mr. Chapman's comment also suggested including FedEx or UPS as delivery options for patients in rural areas who do not have a mailbox at the address listed on their driver's license. The board agreed and made changes to allow for requestors who do not have mailbox at the listed address to receive the records via a trackable delivery service with the requestor being responsible for the additional cost.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.16. Patient Access to Prescription Monitoring Program Prescription Record.

(a) A patient, the patient's parent or legal guardian if the patient is a minor, or the patient's legal guardian if the patient is an incapacitated person as defined by §1002.017(2) of the Estates Code, may obtain a copy of the patient's prescription record, including a list of persons who have accessed that record, as authorized in §481.076(a)(9) of the Texas Controlled Substances Act, by submitting the following to the board:

(1) a completed, notarized patient data request form, including any information or supporting documentation requested on the form;

(2) a copy of the requestor's driver's license or other state photo identity card issued by the state's Department of Motor Vehicles;

(3) if requesting as a parent or legal guardian of the patient, a copy of the patient's birth certificate or the order of guardianship over the patient; and

(4) a $50 fee.

(b) The board shall deliver the requested records to the requestor via certified mail to the address listed on the requestor's driver's license or other state photo identity card issued by the state's Department of Motor Vehicles. If the requestor does not have a mailbox at the listed address, the board shall deliver the records to the requestor at the listed address via a trackable delivery service and the requestor shall be responsible for the cost.

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 February 14, 2020.

TRD-202000684
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: June 1, 2020
Proposal publication date: January 3, 2020
For further information, please call: (512) 305-8010

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PART 23. TEXAS REAL ESTATE COMMISSION

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

22 TAC §535.154

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.154, Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements, in Chapter 535, General Provisions, as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7598). The rule will not be republished.

The amendment to §535.154 removes an unnecessary word that was inadvertently left in the text during the last substantive change to the rule.

One comment was received agreeing with the proposed rule.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The 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 February 13, 2020.

TRD-202000600
Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Effective date: March 4, 2020
Proposal publication date: December 13, 2019
For further information, please call: (512) 936-3284

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.216

The Texas Real Estate Commission (TREC) adopts amendments to §535.216, Renewal of License, in Subchapter R of Chapter 535, General Provisions, as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7599). The rule will not be republished.

The amendments implement statutory changes enacted by the 86th Legislature in SB 37 eliminating consideration of student loan defaults when deciding whether to grant an occupational license and SB 624 authorizing the Commission to deny license renewal if a license holder is in violation of a Commission order.

The amendments also reorganize this section to improve readability and increase transparency for license holders and members of the public. The Texas Real Estate Inspector Committee recommends these amendments.

Two comments were received. One commenter agreed with the proposed rule and one commenter disagreed but provided no reason for the disagreement. As such, the Commission declined to make any changes.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2020.

TRD-202000601
Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Effective date: March 4, 2020
Proposal publication date: December 13, 2019
For further information, please call: (512) 936-3284

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

22 TAC §541.1

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §541.1, Criminal Offense Guidelines, in Chapter 541 Rules Relating to the Provisions of Texas Occupations Code, Chapter 53, without changes to the proposed text as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7601). The rule will not be republished.

The amendments to §541.1 implements statutory changes enacted by the 86th Legislature in HB 1342 regarding the requirements for evaluating the criminal history of licensed applicants and license holders.

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

Two comments were received. One commenter agreed with the proposed rule. One commenter raised a concern about inspectors being subject to the same background check requirements as brokers and sales agents. Staff recommends adopting the rule as proposed. While inspectors will continue to be subject to background check requirements, the only modification proposed that would differ from brokers and sales agents relates to the differences between what offenses are considered directly related to a particular license type. While felony DWI/DUI offenses continue to relate to the duties of brokers and sales agents because of the practice of driving with passenger clients, this is not the case with inspectors. As such, that offense type was removed from the list considered directly related to the duties of an inspector.

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

The 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 February 13, 2020.

TRD-202000602

Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
Effective date: March 4, 2020
Proposal publication date: December 13, 2019
For further information, please call: (512) 936-3284

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 442. INVESTIGATIONS AND HEARINGS

25 TAC §§442.101 - 442.104

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §442.101, concerning Definitions; §442.102, concerning Complaints and Investigations; §442.103, concerning Procedure for Contested Cases for Counselor and Facility Licenses; and §442.104, concerning Administrative Penalties for Licensed Facilities and Counselors and Offender Education Programs.

The repeals are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7820). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to eliminate outdated rules, ensure consistency with Texas Health and Safety Code, and reflect the transition of these services from the Department of State Health Services (DSHS) to HHSC. Rules for chemical dependency treatment facilities currently exist at Texas Administrative Code (TAC) Title 25, Chapter 448, as authorized by Texas Health and Safety Code, Chapter 464. HHSC's due process procedures for chemical dependency treatment facilities are located in 25 TAC §448.409, Action Against a License.

COMMENTS

The 31-day comment period ended January 21, 2020.

During this period, HHSC did not receive any comments regarding the proposed rules repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000555

Karen Ray
Chief Counsel
Department of State Health Services
Effective date: March 1, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 834-4569

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The Commissioner of Insurance adopts amended 28 TAC §3.9901, relating to the adoption of changes to the valuation manual for reserving and related requirements. The amendment is adopted without changes to the proposed text published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7126). The rule will not be republished.

REASONED JUSTIFICATION. Section 425.073 of the Insurance Code requires the Commissioner to adopt a valuation manual that is substantially similar to the valuation manual adopted by the National Association of Insurance Commissioners (NAIC). Section 425.073(c) further requires that any changes to the valuation manual must be substantially similar to changes adopted by the NAIC. The Commissioner must determine that the NAIC's vote approving the changes represent at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life insurance and accident and health annual statements, health annual statements, and fraternal annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 6, 2019, the NAIC adopted changes to the valuation manual with a vote meeting the requirements of Insurance Code §425.073(c). Therefore, TDI must adopt substantially similar changes to the valuation manual. The NAIC valuation manual, including the changes adopted through August 6, 2019, may be viewed at the following website: www.naic.org/documents/cmte_a_latf_related_val_2020_edition.pdf.

This version of the NAIC valuation manual includes non-substantive changes from the version referenced in the preamble to the proposed amendments. The NAIC corrected three typographical errors and added an explanatory sentence that had inadvertently been left out of the version of the NAIC valuation manual referenced in the proposal.

These corrections reflect the changes adopted on August 6, 2019, and therefore meet the requirements of Insurance Code §425.073(c). On page 49, a typographical error was corrected in the lapse rate formula at VM-20 §3.C.3.c.i, by replacing a "-" with a "/" in the ninth line from the bottom of the page. The line directly above the formula identifies the result of the formula

is a ratio which requires a "/." On page 87, a typographical error was corrected in the second guidance note for VM-20 §9.C.3.g, by changing the reference located on the fifth line from the bottom from "9.C.2.g" to "9.C.2.h." On page 206, an explanatory sentence was inserted on the seventh and eight lines from the top. The sentence is "[f]or non-jumbo contracts, the quarterly statutory maximum valuation interest rate is the quarterly valuation rate (Iq) rounded to the nearest one-fourth of one percent (1/4 of 1%)" and explains how the interest rate discussed on the previous page at VM-22 §3.C.3 is rounded. On page 238, a typographical error was corrected in the guidance note for VM-31 §3.D.1.a by changing the reference located on the nineteenth line from the bottom from "3.C.1.a" to "3.D.1.a."

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The Commissioner adopts amended 28 TAC §3.9901 under Insurance Code §425.073 and §36.001.

Section 425.073 requires the Commissioner to adopt changes to the valuation manual that are substantially similar to the changes to the valuation manual adopted by NAIC, and it provides that after a valuation manual has been adopted by the Commissioner by rule, any changes to the valuation manual must be adopted by rule.

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

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 February 12, 2020.

TRD-202000584
James Person
General Counsel
Texas Department of Insurance
Effective date: March 3, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 676-6584

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 129. INCOME BENEFITS--TEMPORARY INCOME BENEFITS

28 TAC §129.5

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to §129.5 (concerning Work Status Reports). The proposed amendments are adopted without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5878) and will not be republished.

REASONED JUSTIFICATION

These rules are adopted to conform Rule 129.5 to Texas Labor Code §408.025(a-1) as amended by House Bill (HB) 387, 86th Legislature (2019). House Bill 387 authorizes a treating doctor to delegate authority to complete and sign a work status report to a licensed advanced practice registered nurse. Delegation requires both that the treating doctor has the authority under their licensing act to make the delegation and that the physician assistant or advanced practice registered nurse has the authority under their licensing act to accept the delegation. The Workers' Compensation Act must be read in context with the licensing acts regarding delegation authority of the treating doctor and receipt of delegation by the physician assistant and advanced practice registered nurse.

Labor Code §408.025(a-1) provides specific authority for a treating doctor to delegate the responsibility to complete and sign a work status report. Under the Workers' Compensation Act, a "[t]reating doctor" means the doctor who is primarily responsible for the employee's health care for an injury." Labor Code §401.011(42). And, a "doctor" includes a licensed doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic. Labor Code §401.011(17).

Subsection 129.5(b) is amended to provide that, as authorized under their licensing act, a treating doctor may delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse. Under Labor Code §408.025, the delegating treating doctor is responsible for the acts of the advanced practice registered nurse.

Subsection (c) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report in the form and manner prescribed by DWC.

Subsection (d) is amended to add delegated advanced practice registered nurses to the list of persons who shall be considered to have filed a complete work status report if the report contains the necessary information prescribed by DWC.

Subsection (e) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report and describes the situations when a work status report must be filed on an injured employee's claim.

Subsection (g) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report with the insurance carrier, employer, and injured employee within seven days of the day of receipt of certain information.

Subsection (i) is amended to add delegated advanced practice registered nurses to the list of persons who, upon completion of a work status report, shall file the report with the insurance carrier, employer, and the injured employee.

Subsection (j) is amended to add delegated advanced practice registered nurses to the list of persons who may bill for preparations of a work status report.

Subsection (j)(1) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" when billing for the work status report.

Subsection (j)(2) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifiers "73" and "RR" when billing for a work status report requested by an insurance carrier.

Subsection (j)(3) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" and "EC" when billing for an extra copy of a previously filed work status report requested by or through the insurance carrier.

DWC previously approved revisions to the DWC Form-073, *Work Status Report,* as the changes made by HB 387 went into effect on September 1, 2019. Advanced practice registered nurses have been authorized to sign work status reports since that date. These amendments merely conform DWC's rules to the revised statute.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Office of Injured Employee Counsel submitted a comment in support of the proposed amendments.

The Texas Medical Association commented on the proposed amendments.

COMMENT: One commenter offered general support for the amendments.

RESPONSE: DWC appreciates the supportive comments.

COMMENT: One commenter requested that DWC clarify that the phrase "[i]f authorized under their licensing act" in subsection (b) is intended to apply to the treating doctor or the physician assistant or advanced practice registered nurse.

RESPONSE: DWC appreciates the comment. The phrase "[i]f authorized under their licensing act" in subsection (b) applies to a treating doctor. Labor Code §408.025(a-1) provides that "[a] treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work." Health care practitioners may provide or delegate services within their scope of practice as authorized by their licensing act and their respective licensing boards. Specifically, Chapters 204 and 301, Occupations Code define the authority of physician assistants and advanced practice registered nurses who act as the agent of the supervising physician for medical services that are delegated by that physician. The Workers' Compensation Act must be read in context with the authority of doctors to delegate and the authority of a physician assistant or advanced practice registered nurse to receive delegations from doctors. No change was made in response to this comment.

COMMENT: One commenter noted that there are limitations inherent in the delegated health care practitioners' licensing acts that would effectively limit treating doctor delegation of the responsibility of signing a work status report. Additionally, the commenter stated that, based on a response to comments on the 2018 amendments to this rule, DWC understands that limitations in the Physician's Assistant Licensing Act continue to apply and should similarly apply to advanced practice registered nurses.

RESPONSE: DWC appreciates the comment and agrees that the licensing acts for the various health care professions in the Occupations Code include limitations that establish whether a responsibility may be delegated, when a responsibility may be delegated, and the scope of any delegation. As noted above, health care practitioners may provide or delegate services within their scope of practice as authorized by their licensing act and their respective licensing boards. No change was made in response to this comment.

COMMENT: One commenter stated that "only treating doctors who are physicians licensed to practice medicine in the state of Texas may delegate the completion and signing of a work status report to a Texas-licensed physician assistant."

RESPONSE: DWC appreciates the comment. Labor Code §408.025(a-1) provides that "[a] treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work." The plain language of the statute provides that a physician assistant or advanced practice registered nurse must be licensed in Texas in order to be eligible to receive the described delegation. There is no stated limitation as to the jurisdiction that has licensed the treating doctor. Injured employees can receive health care from doctors in many jurisdictions. No change was made in response to this comment.

STATUTORY AUTHORITY

DWC adopts amendments to §129.5 under Labor Code §§402.00111, 402.00116, 402.061, and 408.025.

Labor Code §402.00111 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of DWC under the Labor Code and other laws of this state.

Labor Code §402.00116 states that the commissioner is DWC's chief executive and has the powers and duties vested in DWC by the Labor Code and other workers' compensation laws of Texas.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code §408.025 provides that a treating doctor may delegate to a licensed advanced practice registered nurse authority to complete, sign, and file a work status report.

The amendments support the 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.

Filed with the Office of the Secretary of State on February 10, 2020.

TRD-202000556
Kara Mace
Deputy Commissioner
Texas Department of Insurance, Division of Workers' Compensation
Effective date: March 1, 2020
Proposal publication date: October 11, 2019
For further information, please call: (512) 804-4703

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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 adopts new §3.30, concerning natural gas tax managed audits and determination of overpaid amounts, without changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 326). The rule will not be republished.

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.

The comptroller did not receive any comments regarding adoption of the amendment.

This new section 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 (State Taxation).

The new section implements Tax Code, §201.207 (Determination of Overpaid Amounts) and §201.3021 (Managed Audits).

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 February 11, 2020.

TRD-202000574
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: March 2, 2020
Proposal publication date: January 10, 2020
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 2. CAPITOL ACCESS PASS

37 TAC §2.8

The Texas Department of Public Safety (the department) adopts amendments to §2.8, concerning Expiration. This rule is adopted without changes to the proposed text as published in the December 20, 2019 issue of the *Texas Register* (44 TexReg 7857). The rule will not be republished.

This rule change is necessary to implement Senate Bill 616, 86th Legislative Session, which requires the Capitol Access Pass expire no later than the second anniversary of the date it was issued.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.0625(c), which authorizes the department to adopt rules to administer the Capitol Access Pass program; and Texas Government Code, §411.511, which authorizes the Public Safety Commission to establish by rule the expiration dates for the various licenses governed by Texas Government Code, Chapter 411, Subchapter Q.

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 February 14, 2020.

TRD-202000650
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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CHAPTER 6. LICENSE TO CARRY HANDGUNS
SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §6.13

The Texas Department of Public Safety (the department) adopts amendments to §6.13, concerning Photographs. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7857). The rule will not be republished.

These amendments are necessary to implement the 86th Texas Legislature, House Bill 4195. This bill removes the statutory requirement of a color photograph as part of the application for a license to carry a handgun. Therefore, corresponding references within the rule on application requirements have been removed.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.179, which authorizes the department to adopt rules to establish the form of the license.

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 February 14, 2020.

TRD-202000653
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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CHAPTER 13. CONTROLLED SUBSTANCES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §13.1

The Texas Department of Public Safety (the department) adopts amendments to §13.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7858). The rule will not be republished.

These amendments are necessary to implement Senate Bill 616, 86th Texas Legislature. This bill repeals the Health and Safety Code provision requiring distributors and recipients of chemical precursors and laboratory apparatus obtain permits issued by the department. However, the bill leaves in place certain record keeping and reporting requirements for those who use precursor chemicals or laboratory apparatus, and the authority for audits and the inspection of records.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

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 February 14, 2020.

TRD-202000656
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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SUBCHAPTER B. PRECURSOR CHEMICAL LABORATORY APPARATUS (PCLA)

37 TAC §§13.11, 13.12, 13.14, 13.15, 13.20, 13.22

The Texas Department of Public Safety (the department) adopts the repeal of §§13.11, 13.12, 13.14, 13.15, 13.20, and 13.22, concerning Precursor Chemical Laboratory Apparatus (PCLA). These repeals are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7859). The rules will not be republished.

The 86th Legislative Session, Senate Bill 616 repealed the Health and Safety Code provisions requiring distributors and recipients of chemical precursors and laboratory apparatus obtain permits issued by the department; therefore, these rules are obsolete.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

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 February 14, 2020.

TRD-202000658
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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37 TAC §§13.13, 13.16, 13.19, 13.21, 13.23

The Texas Department of Public Safety (the department) adopts amendments to §§13.13, 13.16, 13.19, 13.21, and 13.23, concerning Precursor Chemical and Laboratory Apparatus (PCLA). Sections 13.13, 13.16, 13.21, and 13.23 are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7860). Section 13.19(b) was changed to use the plural forms of "distributor" and "recipient." Section 13.19 will be republished.

These amendments are necessary to implement Senate Bill 616, 86th Texas Legislature. This bill repeals the Health and Safety

Code provision requiring distributors and recipients of chemical precursors and laboratory apparatus to obtain permits issued by the department. However, the bill leaves in place certain record keeping and reporting requirements for those who use precursor chemicals or laboratory apparatus, and the authority for audits and the inspection of records.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

§13.19. Inspection.

(a) Upon request of the department, a distributor or recipient may be provided up to 24 hours, excluding weekends and holidays, to produce any or all records required to be maintained on site for inspection by the department.

(b) All distributors or recipients authorized to maintain an off-site central record keeping system shall, upon request, produce the requested records within two business days.

(c) If an individual maintains a record under this chapter using an automated data processing system and if the individual does not have a printer available on site, the individual must:

(1) Make a useable copy available to the department at the close of business the day after the audit; and

(2) Certify that the information contained within the copy is true and correct as of the date of audit and has not been altered, amended, or modified.

(d) No individual in charge of a premise, item, or record covered by the Act or this subchapter may refuse, or interfere with, an inspection.

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 February 14, 2020.

TRD-202000660
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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SUBCHAPTER C. PEYOTE DISTRIBUTORS

37 TAC §§13.31 - 13.44

The Texas Department of Public Safety (the department) adopts the repeal of §§13.31 - 13.44, concerning Peyote Distributors. These repeals are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7862). The rules will not be republished.

These rule changes are necessary to implement Senate Bill 616, 86th Legislative Session. Senate Bill 616 repeals the Health and Safety Code provision requiring peyote distributors register with the department.

No comments were received regarding the adoption of these repeals.

These repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce the chapter.

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 February 14, 2020.

TRD-202000662
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER A. LICENSING REQUIREMENTS

37 TAC §15.6

The Texas Department of Public Safety (the department) adopts amendments to §15.6, concerning Motorcycle License. This rule is adopted with a minor grammar change to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7863). The rule will be republished.

The 86th Texas Legislature enacted House Bill 3171, which repealed Texas Transportation Code, §521.225 requiring a restricted Class M license to operate a moped and redefined a motor-driven cycle as a motorcycle. This rule amendment removes references to moped licenses and motor-driven cycles.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

§15.6. Motorcycle License.

A driver who qualifies to operate a motorcycle will be issued a Class M license. When a driver is also qualified to operate a motor vehicle with a Class A, B, or C license, one license with any applicable restrictions will be issued. Parent or guardian authorization is required for applicants younger than 18 years of age.

(1) Class M license.

(A) The minimum age is 16 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course.

(B) This authorizes operation of all motorcycles and three-wheeled motorcycles.

(2) Restricted Class M license.

(A) The minimum age is 16 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course specific to the operation of a three-wheeled motorcycle.

(B) The minimum age is 15 years with completion of the classroom phase of driver education and a department approved motorcycle operator training course specific to 250 cubic centimeter piston displacement or less.

(3) A Motorcycle Operator Training Program Certificate of Completion (Form MSB-8) or a completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the Motorcycle Safety Foundation curriculum standards will be used as proof of successful completion of a department approved motorcycle operator training course.

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 February 14, 2020.

TRD-202000666
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.27

The Texas Department of Public Safety (the department) adopts amendments to §15.27, concerning Signature by Parent or Guardian for a Driver License. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7864). The rule will not be republished.

These amendments are necessary because the 86th Texas Legislature enacted House Bill 2551, which added an agent with power of attorney for the parent to the persons authorized to sign for minor's driver license.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000667
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) adopts the amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. This rule is adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7865). The rule will not be republished.

The amendment is necessary because the 86th Texas Legislature enacted House Bill 3171, which repeals the requirement for a Class M license restricted to moped operation.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2020.

TRD-202000668
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 5, 2020
Proposal publication date: December 20, 2019
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §§57.9 - 57.11, 57.14, 57.15, 57.18, 57.22 - 57.27, 57.29, 57.30, 57.33, 57.34, 57.36, 57.41, 57.48 - 57.51, 57.58

INTRODUCTION. The Motor Vehicle Crime Prevention Authority adopts amendments to 43 TAC Chapter 57, Motor Vehicle Crime Prevention Authority, in §§57.9 - 57.11, 57.14, 57.15, 57.18, 57.22 - 57.27, 57.29, 57.30, 57.33, 57.34, 57.36, 57.41, 57.48 - 57.51, and 57.58. The Authority adopts the amendments and the titles of Transportation Code, Part 3, and Chapter 57 without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4663). These rules will not be republished.

REASONED JUSTIFICATION. The amended sections are necessary to implement Transportation Code Chapter 1006 as amended by Senate Bill (SB) 604 and House Bill (HB) 2048, 86th Legislature, Regular Session (2019). Chapter 1006 was amended to change the name of the "Automobile Burglary and Theft Prevention Authority" (ABTPA) to the "Motor Vehicle Crime Prevention Authority" (MVCPA) and delete the authority to implement a vehicle registration program. An amendment to Transportation Code §1006.153 increased the fee that insurers pay to the Authority.

The titles to Part 3 and Chapter 57 and sections throughout Chapter 57 were amended replacing references to ABPTA with MVCPA to implement the name change in SB 604.

Section 57.14(b)(3) deletes "Automobile Registration" from the list of MVCPA program categories eligible for consideration for funding. This deletion implements SB 604 which removed the Authority's authority to establish and fund a motor vehicle registration program.

Section 57.48(a) updates the referenced citation from Texas Civil Statutes, Article 4413(37), §10 to Transportation Code §1006.153 to reflect the current statute after recodification.

Section 57.48(a)(1) increases the statutory fee from $2 payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals to $4 payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals to implement the increase in HB 2048.

Section 57.48(a)(3) clarifies the type of insurance policy that is subject to the statutory fee by adding "insurance" after "motor vehicle;" adding" or automobile insurance" after motor vehicle; and updating the referenced citation from Texas Civil Statutes, Article 4413(37), §1(5) to Transportation Code Chapter 1006 to reflect the current statute after recodification.

Section 57.48(a)(4) increases the amount of the referenced statutory fee from $2 to $4 to implement the increase in HB 2048.

Section 57.49(a) and (b) update the referenced citation from Texas Civil Statutes, Article 4413(37), §10 to Transportation Code §1006.153 to reflect the current statute after recodification.

Section 57. 50 updates the referenced citation from Texas Civil Statutes, Article 4413(37), §10 to Transportation Code §1006.153 to reflect the current statute after recodification.

SUMMARY OF COMMENTS.

The Authority received one written comment on the proposal.

Comment.

The commenter is concerned that insurance rates are already too expensive and suggests that the Authority focus on making insurance more effective and less profitable instead of raising fees.

Response.

The Authority appreciates the comment; however, it is beyond the scope of the rule project and the jurisdiction of the Authority. The Authority does not regulate the business of insurance. The $2 increase in the fee in §57.48 only implements a required statutory change.

STATUTORY AUTHORITY. The Authority adopts amended §§57.9 - 57.11, 57.14, 57.15, 57.18, 57.22 - 57.27, 57.29, 57.30, 57.33, 57.34, 57.36, 57.41, 57.48 - 57.51, and 57.58 under SB 604, Section 5; House Bill 2048; and Transportation Code Chapter 1006.

Senate Bill 604, Section 5, 86th Legislature, Regular Session (2019), changed the name of the "Automobile Burglary and Theft Prevention Authority" to the "Motor Vehicle Crime Prevention Authority" and deleted the authority to implement a vehicle registration program.

House Bill 2048, Section 9, 86th Legislature, Regular Session (2019), increased the fee paid to the Authority from insurers from $2 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer to $4 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

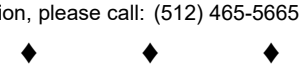
Transportation Code, §1006.101(a), authorizes the Authority to adopt rules to implement the Authority's powers and duties.

CROSS REFERENCE TO STATUTE. Transportation Code Chapter 1006; and Transportation Code §1006.101(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 February 10, 2020.

TRD-202000559
David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
Effective date: March 1, 2020
Proposal publication date: August 30, 2019
For further information, please call: (512) 465-5665



Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 2, Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 2 was published in the *Texas Register* on December 27, 2019 (44 TexReg 8343). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 2 continue to exist and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000630
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Filed: February 14, 2020

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Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 5, Chapter 86, Retail Creditors, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 86 was published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8343). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the Office of Consumer Credit Commissioner, the commission has determined that certain revisions are appropriate and necessary. Those proposed changes are published elsewhere in this issue of the *Texas Register.*

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 86 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000632
Matthew Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Filed: February 14, 2020

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) initiated a review of Chapter 21, Interconnection Agreements for Telecommunications Service Providers, under Texas Government Code §2001.039, *Agency Review of Existing Rules.* The commission's Chapter 21 Interconnection Agreement rules (Texas Administrative Code, Title 16, Part 2) establish procedures for approving interconnection agreements and resolving open issues under the Federal Telecommunications Act of 1996 (FTA) §252. The purpose of this review was to consider whether to re-adopt this Chapter. The notice of intention to review Chapter 21 was published in the *Texas Register* on October 25, 2019 (44 TexReg 6378). Project Number 49765 is assigned to this rule review project. Having completed this review, the commission finds that the reasons for initially adopting Chapter 21 continue to exist and re-adopts Chapter 21.

The commission received no comments on this project.

There was no request for a public hearing.

The commission has completed the review of the rules in Chapter 21 under Texas Government Code §2001.039 and finds that the reason for adopting the rules in Chapter 21 continues to exist.

The commission readopts Chapter 21, Interconnection Agreements for Telecommunications Service Providers, under PURA §14.002 (West 2007 and Supp. 2017), which provides the Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (West 2017), which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Government Code §2001.039.

This agency hereby certifies that the rules in Chapter 21, as readopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that Chapter 21, Interconnection Agreements for Telecommunications Service Providers, is hereby readopted under Texas Government Code §2001.039.

TRD-202000672
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: February 14, 2020

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Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 157, Hearings and Appeals, Subchapter AA, General Provisions for Hearings Before the Commissioner of Education; Subchapter BB, Specific Appeals to the Commissioner; Subchapter CC, Hearings of Appeals Arising Under Federal Law and Regulations; Subchapter DD, Hearings Conducted by Independent Hearing Examiners; and Subchapter EE, Informal Review, Formal Review, and Review by State Office of Administrative Hearings, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 157, Subchapters AA-EE, in the February 22, 2019 issue of the *Texas Register* (44 TexReg 875).

Relating to the review of 19 TAC Chapter 157, Subchapters AA-EE, the TEA finds that the reasons for adopting Subchapters AA-EE continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters AA-EE. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 157.

TRD-202000725
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 19, 2020

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 283, (§§283.1 - 283.12), concerning Licensing Requirements for Pharmacists; Chapter 291, (§§291.31 - 291.36), concerning Pharmacies (Community Pharmacy (class A)); and Chapter 315, (§§315.1 - 315.14), concerning Controlled Substances, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the January 3, 2020, issue of the *Texas Register* (45 TexReg 161).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-202000685
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: February 14, 2020

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 7, Memoranda of Understanding, 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 August 30, 2019, issue of the *Texas Register* (44 TexReg 4749).

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 7 are required because the rules contain memorandum of understanding between the commission and various state agencies including the Texas Water Development Board, Texas Department of Transportation, Railroad Commission of Texas, and General Land Office. These memoranda of understanding are necessary to effectively conduct state business on a day-to-day basis.

The commission also determined that §7.101, Memorandum of Understanding between the Texas Department of Commerce and the Texas Natural Resource Conservation Commission, is obsolete, because §7.101(d) provides that the MOU between the Texas Natural Resource Conservation Commission and Texas Department of Commerce terminated on August 31, 1999, unless extended.

Public Comment

The public comment period closed on October 1, 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 7 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Repeal of obsolete rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202000678
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 36, Suspension or Adjustment of Water Rights During Drought or Emergency Water Shortage, 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 September 13, 2019, issue of the *Texas Register* (44 TexReg 5153).

The commission has determined that the rules in Chapter 36 are no longer needed and may be repealed in a separate rulemaking action. The rules in Chapter 36 were adopted on April 11, 2012, effective May 3, 2012, to implement Texas Water Code (TWC), §11.053, which authorizes the commission to temporarily suspend and adjust water rights during times of drought or emergency shortage of water. After the commission issued a curtailment order in response to a senior priority call, the Texas Farm Bureau (Farm Bureau) challenged the rules in Travis County District Court (district court) in December 2012. The Farm Bureau asserted that the commission had exceeded its authority when it

adopted the rules because the rules did not follow the priority doctrine by exempting certain junior water rights from suspension or adjustment. The district court agreed with the Farm Bureau and declared the rules invalid. The district court judgment was stayed while TCEQ appealed. The 13th Court of Appeals affirmed the district court decision on April 2, 2015. The Texas Supreme Court denied TCEQ's petition for review on February 19, 2016.

Although these rules are subject to the quadrennial review process under Texas Government Code, §2001.039, the rules in Chapter 36 are not needed because they have been invalidated by the courts and have been unenforceable since 2016. Furthermore, the rules are not needed because the commission has the authority to respond to senior priority calls under TCEQ's general jurisdiction over the enforcement of water rights in TWC, §5.013(a)(1) and specific authority to issue administrative orders for water right violations under TWC, §11.0842.

Public Comment

The public comment period closed on October 14, 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 rules in 30 TAC Chapter 36 are no longer needed. Repeal of obsolete rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202000680
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 70, Enforcement, 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 August 30, 2019, issue of the *Texas Register* (44 TexReg 4749).

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 70 are required because the rules implement the commission's enforcement authority under Texas Water Code (TWC), §7.002, of laws within the commission's jurisdiction and to establish the procedures whereby enforcement matters are handled by the commission. The commission is required to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state, and to adopt reasonable procedural rules to be followed in a commission hearing (TWC, §5.103). The commission is required to adopt rules of practice stating the nature of all available formal and informal procedures (Texas Government Code, §2001.004). The rules also implement the executive director's authority to pursue an enforcement matter through court action (by referring the matter to the Texas Attorney General), as is contemplated in TWC, §5.230. Chapter 70, Subchapter D, Criminal Enforcement Review, implements the commission's authority under TWC, §7.203.

Public Comment

The public comment period closed on October 1, 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 70 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000681
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 210, Use of Reclaimed Water, 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 September 13, 2019, issue of the *Texas Register* (44 TexReg 5153).

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 210 are needed to establish water quality criteria and design and operational requirements for the reuse of reclaimed water. The requirements encourage and facilitate the reuse of treated domestic wastewater effluent, treated industrial wastewater effluent, graywater, and alternative onsite water for beneficial purposes. The rules assist in the conservation of surface water and groundwater, ensure the protection of public health, protect the quality of surface water and groundwater, and help ensure an adequate supply of water for present and future needs. These sections do not affect any current requirements necessitating the need for a water right or amendment, if applicable to a particular reclaimed water use or activity.

Chapter 210 also establishes requirements to protect the health of persons who might normally come into contact with reclaimed water; protect against adverse effects from reclaimed water should crops be irrigated with reclaimed water; and ensure that the conveyance, storage, and use of reclaimed water will not cause adverse effects to surface water, groundwater, and soil resources.

Public Comment

The public comment period closed on October 14, 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 210 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000631
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

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The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 285, On-Site Sewage Facilities, 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 September 27, 2019, issue of the *Texas Register* (44 TexReg 5640).

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 285 are required to implement Texas Health and Safety Code, Chapter 366 by providing a comprehensive regulatory program for the management of On-Site Sewage Facilities (OSSFs). These rules are necessary to eliminate and prevent health hazards by regulating and establishing minimum standards for planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, and inspection of OSSFs. Additionally, these rules provide the procedures for the designation of local governmental entities as authorized agents; the licensing of OSSF installers, designated representatives, and OSSF site evaluators; and the registration of OSSF apprentices.

Public Comment

The public comment period closed on October 28, 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 285 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000682
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 294, Priority Groundwater Management Areas, 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 September 6, 2019, issue of the *Texas Register* (44 TexReg 4879).

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 294 are required because Chapter 294 implements the requirements of Texas Water Code, Chapter 35, which allows the commission to identify, study, and designate priority groundwater management areas.

Public Comment

The public comment period closed on October 7, 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 294 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202000634
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 37 TAC §10.17(b)

VIOLATION	1ST ACTION	2ND ACTION WITHIN 2 YEARS	3RD ACTION WITHIN 2 YEARS	4TH ACTION WITHIN 2 YEARS	5TH ACTION WITHIN 2 YEARS
ADDRESS					
Failure to maintain current mailing, physical and email address on file. 37 TAC 10.2	Advisory	$250	$500	Suspension, 30 days	Suspension, 60 days, or Revocation
OWNERSHIP					
Failure to notify DPS of change in ownership within 30 days. 37 TAC 10.2(c)	Advisory	$250	$500	Suspension, 30 days	Suspension, 60 days, or Revocation
LOCATIONS					
Failure to notify DPS of additional or new location w/in 30 days. 37 TAC 10.2(b)	$250	$500	Suspension, 30 days	Suspension, 60 days	Revocation
RECORDS					
Failure to maintain all necessary equipment. 37 TAC 10.11(c)(1)	Advisory	$500	$1,000	Suspension, 30 days	Suspension, 60 days, or Revocation
Failure to provide proof of required liability insurance. 37 TAC 10.11(c)(3)	$500	$1,000	Suspension, 30 days	Suspension, 60 days	Revocation
Failure to submit required reports. 37 TAC 10.14 (a)(1)	$500	$1000	Suspension, 30 days	Suspension, 60 days	Revocation
Failure to maintain required records. 37 TAC 10.12	Advisory	$250	$500	Suspension, 30 days	Suspension, 60 days, or Revocation
CONDUCT					
Violation of any provision of 37 TAC 10.12 (other than record violation)	$500	$1,000	Suspension, 30 days	Suspension, 60 days	Revocation
Failure to pay annual inspection fee.	$250	$500	$1000	Suspension, 30 days	Suspension, 60 days
Violation of law relating to conduct of the business 37 TAC 10.14 (5)	$250	$500	$1000	Suspension, 30 days	Suspension, 60 days, or Revocation
Failure to pay administrative penalty	Suspension, until penalty is paid in full				

Figure: 37 TAC §23.62(b)

Violations and Penalty Schedule

Category	1st Violation	2nd Violation	3rd Violation	4th Violation
A	Advisory	$250	$500	6 month suspension
B	$500.00	12 month suspension	Revocation	Lifetime Revocation
C	12 month suspension	Revocation	Lifetime Revocation	
D [Failing to possess a valid driver's license]	Suspension until bar removed			
E	$500	12 month suspension	Revocation	Lifetime Revocation
Administrative action [Failure to pay]	Suspension, until penalty is paid in full			

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.

State Bar of Texas

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Part VII, Texas Disciplinary Rules of Professional Conduct

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct

VII. INFORMATION ABOUT LEGAL SERVICES (Lawyer Advertising and Solicitation Rules)

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rules. The Committee will accept comments concerning the proposed rules through April 10, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rules will be held at 10:30 a.m. on April 7, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Background and Summary

The Committee previously published proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct in the *Texas Bar Journal*, in the *Texas Register*, and on the State Bar of Texas website. After receiving numerous public comments, the Committee incorporated many suggested revisions into the version of the proposed rules that it recommended to the State Bar of Texas Board of Directors. At its January 24, 2020, meeting, the Board voted to return the proposal to the Committee for additional consideration, including specifically the possibility of amending the proposed rules to be consistent with the majority of other states regarding the use of trade names.

The Committee now publishes this revised draft of proposed changes to Part VII of the Texas Disciplinary Rules of Professional Conduct. The new draft consists of six proposed rules, numbered 7.01 to 7.06, which are identical to the proposal submitted to the Board, with the exception that previously proposed Rule 7.07 has been eliminated. This means that the current blanket prohibition on the use of trade names by lawyers in private practice is not part of the new draft. However, proposed Rule 7.01 will continue to prohibit a lawyer from making or sponsoring any false or misleading communication about the qualifications or services of a lawyer or law firm.

Proposed Rules (Clean Version)

Rule 7.01 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful

and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve.

(b) This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

(c) A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(d) A statement or disclaimer required by these Rules shall be sufficiently clear that it can reasonably be understood by an ordinary person and made in each language used in the communication. A statement that a language is spoken or understood does not require a statement or disclaimer in that language.

(e) A lawyer shall not state or imply that the lawyer can achieve results by violence or means that violate these Rules or other law.

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate.

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Rule 7.02 Advertisements

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location.

(b) A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization;" and

(2) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

(c) If an advertisement by a lawyer discloses a willingness to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as the costs of litigation.

(d) A lawyer who advertises a specific fee or range of fees for an identified service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03 Solicitation and Other Prohibited Communications

(a) The following definitions apply to this Rule:

(1) "Regulated telephone, social media, or other electronic contact" means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) A lawyer "solicits" employment by making a "solicitation communication," as that term is defined in Rule 7.01(b)(2).

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence.

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the communication is:

(i) another lawyer;

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value.

(g) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04 Filing Requirements for Advertisements and Solicitation Communications

(a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication.

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party.

Rule 7.05 Communications Exempt from Filing Requirements

The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:

(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

(c) a listing or entry in a regularly published law list;

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;

(g) a communication on a professional social media website to the extent that it contains only resume-type information;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as "attorney," "lawyer," "law office," or "firm;"

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

(6) foreign language abilities;

(7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;

(8) identification of prepaid or group legal service plans in which the lawyer participates;

(9) the acceptance or nonacceptance of credit cards;

(10) fees charged for an initial consultation or routine legal services;

(11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;

(12) any disclosure or statement required by these Rules; and

(13) any other information specified in orders promulgated by the Supreme Court of Texas.

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9), engaged in by another person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by Rules 7.01 through 7.03, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Proposed Rules (Redline Version)

Rule 7.01. Communications Concerning a Lawyer's Services ~~Firm Names and Letterhead~~

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of a lawyer or law firm. Information about legal services must be truthful and nondeceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. ~~A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.~~

(b) This Rule governs all communications about a lawyer's services, including advertisements and solicitation communications. For purposes of Rules 7.01 to 7.06:

(1) An "advertisement" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to members of the public in general, which offers or promotes legal services under circumstances where the lawyer neither knows nor reasonably should know that the recipients need legal services in particular matters.

(2) A "solicitation communication" is a communication substantially motivated by pecuniary gain that is made by or on behalf of a lawyer to a specific person who has not sought the lawyer's advice or services, which reasonably can be understood as offering to provide legal services that the lawyer knows or reasonably should know the person needs in a particular matter.

~~A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

(c) A law firm name may include the names of current members of the firm and of deceased or retired members of the firm, or of a predecessor firm, if there has been a succession in the firm identity. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with an office in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located. ~~The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~

(d) A statement or disclaimer required by these Rules shall be sufficiently clear that it can reasonably be understood by an ordinary person and made in each language used in the communication. A statement that a language is spoken or understood does not require a statement or disclaimer in that language. ~~A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.~~

(e) A lawyer shall not state or imply that the lawyer can achieve results by violence or means that violate these Rules or other law. ~~A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.~~

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate. ~~A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).~~

(g) If a lawyer who advertises the amount of a verdict secured on behalf of a client knows that the verdict was later reduced or reversed, or that the case was settled for a lesser amount, the lawyer must state in each advertisement of the verdict, with equal or greater prominence, the amount of money that was ultimately received by the client.

Rule 7.02. Advertisements ~~Communications Concerning a Lawyer's Services~~

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location. ~~A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:~~

~~(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;~~

~~(2) contains any reference in a public media advertisement to past successes or results obtained unless~~

~~(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict.~~

~~(ii) the amount involved was actually received by the client,~~

~~(iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and~~

~~(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;~~

~~(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;~~

~~(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;~~

~~(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;~~

~~(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or~~

~~(7) uses an actor or model to portray a client of the lawyer or law firm.~~

(b) A lawyer who advertises may communicate that the lawyer does or does not practice in particular fields of law, but shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(1) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization;" and

(2) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence in a field of practice, may include a factually accurate, non-misleading statement of such membership or certification, but only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of published criteria which the Texas Board of Legal Specialization has established as required for such certification.

~~Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.~~

(c) If an advertisement by a lawyer discloses a willingness to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as the costs of litigation. ~~A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.~~

(d) A lawyer who advertises a specific fee or range of fees for an identified service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so. ~~Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.~~

Rule 7.03. Solicitation and Other Prohibited Communications ~~Prohibited Solicitations and Payments~~

(a) The following definitions apply to this Rule:

(1) "Regulated telephone, social media, or other electronic contact" means telephone, social media, or electronic communication initiated by a lawyer, or by a person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) A lawyer "solicits" employment by making a "solicitation communication," as that term is defined in Rule 7.01(b)(2).

~~A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:~~

~~(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;~~

~~(2) the communication contains information prohibited by Rule 7.02(a); or~~

~~(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.~~

(b) A lawyer shall not solicit through in-person contact, or through regulated telephone, social media, or other electronic contact, professional employment from a non-client, unless the target of the solicitation is:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

~~A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a communication that involves coercion, duress, overreaching, intimidation, or undue influence. ~~A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule.~~

(d) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a solicitation communication to a prospective client, if:

(1) the communication is misleadingly designed to resemble a legal pleading or other legal document; or

(2) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the communication is:

(i) another lawyer;

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

~~A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).~~

(e) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting or referring prospective clients for professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

(1) This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Texas law.

(2) A lawyer may refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral agreement is not exclusive;

(ii) clients are informed of the existence and nature of the agreement; and

(iii) the lawyer exercises independent professional judgment in making referrals.

~~A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~

(f) A lawyer shall not, for the purpose of securing employment, pay, give, advance, or offer to pay, give, or advance anything of value to a prospective client, other than actual litigation expenses and other financial assistance permitted by Rule 1.08(d), or ordinary social hospitality of nominal value. ~~As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.~~

(g) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04. Filing Requirements for Advertisements and Solicitation Communications ~~Advertisements in the Public Media~~

(a) Except as exempt under Rule 7.05, a lawyer shall file with the Advertising Review Committee, State Bar of Texas, no later than ten (10) days after the date of dissemination of an advertisement of legal services, or ten (10) days after the date of a solicitation communication sent by any means:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee authorized by the Board of Directors.

~~A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:~~

~~(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.~~

~~(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.~~

~~(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.~~

(b) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in an advertisement or solicitation communication. ~~A lawyer who advertises in the public media:~~

~~(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and~~

~~(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:~~

~~(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization — Texas Board of Legal Specialization;" and~~

~~(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified area of specialization name of certifying organization," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and~~

~~(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement;~~

~~(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and~~

~~(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.~~

(c) A lawyer who desires to secure pre-approval of an advertisement or solicitation communication may submit to the Advertising Review Committee, not fewer than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a), except that in the case of an advertisement or solicitation communication that has not yet been produced, the documentation will consist of a proposed text, production script, or other description, including details about the illustrations, actions, events, scenes, and background sounds that will be depicted. A finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials submitted for pre-approval if the lawyer fairly and accurately described the advertisement or solicitation communication that was later produced. A finding of compliance is admissible evidence if offered by a party. ~~Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously, and in language easily understood by an ordinary consumer.~~

~~(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the Internet, or electronic, or digital media.~~

~~(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.~~

~~(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.~~

~~(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.~~

~~(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.~~

~~(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.~~

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office, or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

~~(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:~~

~~(1) ensuring that each advertisement does not violate this Rule; and~~

~~(2) complying with the filing requirements of Rule 7.07.~~

~~(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.~~

~~(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.~~

Rule 7.05. Communications Exempt from Filing Requirements ~~Prohibited Written, Electronic, Or Digital Solicitations~~

The following communications are exempt from the filing requirements of Rule 7.04 unless they fail to comply with Rules 7.01, 7.02, and 7.03:

(a) any communication of a bona fide nonprofit legal aid organization that is used to educate members of the public about the law or to promote the availability of free or reduced-fee legal services;

(b) information and links posted on a law firm website, except the contents of the website homepage, unless that information is otherwise exempt from filing;

(c) a listing or entry in a regularly published law list;

(d) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or law firm, or a business card;

(e) a professional newsletter in any media that it is sent, delivered, or transmitted only to:

(1) existing or former clients;

(2) other lawyers or professionals;

(3) persons known by the lawyer to be experienced users of the type of legal services involved for business matters;

(4) members of a nonprofit organization which has requested that members receive the newsletter; or

(5) persons who have asked to receive the newsletter;

(f) a solicitation communication directed by a lawyer to:

(1) another lawyer;

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer; or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters;

(g) a communication on a professional social media website to the extent that it contains only resume-type information;

(h) an advertisement that:

(1) identifies a lawyer or a firm as a contributor or sponsor of a charitable, community, or public interest program, activity, or event; and

(2) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, contact information, and the fact of the contribution or sponsorship;

(i) communications that contain only the following types of information:

(1) the name of the law firm and any lawyer in the law firm, office addresses, electronic addresses, social media names and addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession, such as "attorney," "lawyer," "law office," or "firm;"

(2) the areas of law in which lawyers in the firm practice, concentrate, specialize, or intend to practice;

(3) the admission of a lawyer in the law firm to the State Bar of Texas or the bar of any court or jurisdiction;

(4) the educational background of the lawyer;

(5) technical and professional licenses granted by this state and other recognized licensing authorities;

(6) foreign language abilities;

(7) areas of law in which a lawyer is certified by the Texas Board of Legal Specialization or by an organization that is accredited by the Texas Board of Legal Specialization;

(8) identification of prepaid or group legal service plans in which the lawyer participates;

(9) the acceptance or nonacceptance of credit cards;

(10) fees charged for an initial consultation or routine legal services;

(11) identification of a lawyer or a law firm as a contributor or sponsor of a charitable, community, or public interest program, activity or event;

(12) any disclosure or statement required by these Rules; and

(13) any other information specified in orders promulgated by the Supreme Court of Texas.

~~(a) A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit a written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:~~

~~(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;~~

~~(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or~~

~~(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.~~

~~(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:~~

~~(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:~~

~~(i) in a color that contrasts sharply with the background color; and~~

~~(ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger~~

~~(2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;~~

~~(3) shall not be made to resemble legal pleadings or other legal documents;~~

(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and

(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication, or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT."

(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement;

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which

~~each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.~~

~~(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form, of electronic solicitation communication:~~

~~(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;~~

~~(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~

~~(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~

~~(4) that is requested by the prospective client.~~

Rule 7.06. Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by another ~~any other~~ person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9), engaged in by another ~~any other~~ person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom ~~any of~~ the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by ~~any of~~ Rules 7.01 through 7.03~~5~~, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

~~**Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations**~~

~~(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by~~

~~any means, including electronic, of a written, audio, audio visual, digital or other electronic solicitation communication:~~

~~(1) a copy of the written, audio, audio visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;~~

~~(2) a completed lawyer advertising and solicitation communication application form; and~~

~~(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.~~

~~(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:~~

~~(1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;~~

~~(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;~~

~~(3) a statement of when and where the advertisement has been, is, or will be used;~~

~~(4) a completed lawyer advertising and solicitation communication application form; and~~

~~(5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.~~

~~(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:~~

~~(1) the intended initial access page of a website;~~

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites,

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b), or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information:

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney", "lawyer", "law office", or "firm;"

(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language ability;

(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c).

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;

(x) any fee for initial consultation and fee schedule;

(xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;

(xii) in the case of a website, links to other websites;

(xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xiv) any disclosure or statement required by these rules; and

(xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted only to:

~~(i) existing or former clients;~~

~~(ii) other lawyers or professionals; or~~

~~(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;~~

~~(6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~

~~(7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~

~~(8) a solicitation communication that is requested by the prospective client.~~

~~(f) if requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment.~~

TRD-202000698
Brad Johnson
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: February 18, 2020

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Rule 13.04, Texas Rules of Disciplinary Procedure

♦ ♦ ♦

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Rules of Disciplinary Procedure

Rule 13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through April 10, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rule will be held at 10:30 a.m. on April 7, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rule (Redline Version)

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.

B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.

C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.

D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.

E. Give appropriate notice to persons or entities that may be affected other than the client.

F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule may incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

Proposed Rule (Clean Version)

13.04. Voluntary Appointment of Custodian Attorney for Cessation of Practice: In lieu of the procedures set forth in Rules 13.02 and 13.03, an attorney ceasing practice or planning for the cessation of practice ("appointing attorney" for purposes of this Rule) may voluntarily designate a Texas attorney licensed and in good standing to act as custodian ("custodian attorney" for purposes of this Rule) to assist in the final resolution and closure of the attorney's practice. The terms of the appointing documents, which shall be signed and acknowledged by the appointing attorney and custodian attorney, may include any of the following duties assumed:

A. Examine the client matters, including files and records of the appointing attorney's practice, and obtain information about any matters that may require attention.

B. Notify persons and entities that appear to be clients of the appointing attorney of the cessation of the law practice, and suggest that they obtain other legal counsel.

C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.

D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.

E. Give appropriate notice to persons or entities that may be affected other than the client.

F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian attorney shall observe the attorney-client relationship and privilege as if the custodian were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this Rule. Except for intentional misconduct or gross negligence, no person acting as custodian attorney under this Rule may incur any liability by reason of the actions taken pursuant to this Rule.

The privileges and limitations of liability contained herein shall not apply to any legal representation taken over by the custodian attorney.

TRD-202000697
Brad Johnson
Disciplinary Rules and Referenda Attorney
State Bar of Texas
Filed: February 18, 2020

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Office of Consumer Credit Commissioner

Adjustments to Maximum Fee Amounts

Figure 1:

Description	Citation	Adjusted Amount
Debt management setup fee	394.210(f)(1)	$111.00
Debt management monthly service fee	394.210(f)(2)	Lesser of $11.00 per account or $56.00
Debt settlement setup fee	394.210(g)(1)	$445.00
Debt settlement monthly service fee	394.210(g)(2)	Lesser of $11.00 per account or $56.00
Counseling or education if no debt management or settlement service provided	394.210(l)	$111.00
Fee for dishonored payment	394.210(n)	$28.00

Note: These calculations are based on comparing the base year index for December 2011 (225.672) to the index for December 2018 (251.233). The percentage change is an 11.13266% increase, rounded to the nearest dollar.

Effective Maximum Fee Amounts: July 1, 2020 to June 30, 2021

Figure 2:

Description	Citation	Adjusted Amount
Debt management setup fee	394.210(f)(1)	$114.00
Debt management monthly service fee	394.210(f)(2)	Lesser of $11.00 per account or $57.00
Debt settlement setup fee	394.210(g)(1)	$455.00
Debt settlement monthly service fee	394.210(g)(2)	Lesser of $11.00 per account or $57.00
Counseling or education if no debt management or settlement service provided	394.210(l)	$114.00
Fee for dishonored payment	394.210(n)	$28.00

Note: These calculations are based on comparing the reference base index for December 2011 (225.672) to the index for December 2019 (256.974). The percentage change is a 13.8706% increase, rounded to the nearest dollar.

The fee descriptions above are just a summary. Providers should carefully review Section 394.210 and other applicable law to ensure that their fees are authorized.

TRD-202000717
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 19, 2020

Section 394.210 of the Texas Finance Code lists maximum fee amounts for debt management and debt settlement providers. Under Section 394.2101, the OCCC publishes adjustments to these amounts based on the Consumer Price Index for All Urban Consumers (1982-84.

Current Fee Amounts: July 1, 2019 to June 30, 2020

The following maximum fee amounts are in effect from July 1, 2019 to June 30, 2020:

The effective maximum fee amounts for July 1, 2020 to June 30, 2021 will be adjusted as follows:

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/24/20 - 03/01/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/24/20 - 03/01/20 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/20 - 03/31/20 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/20 - 03/31/20 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-202000716

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 19, 2020

♦ ♦ ♦

Court of Criminal Appeals

Final Approval of Amendments to Texas Rules of Appellate Procedure 13.5, 25.1 and 32.1

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 20-003

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 13.5, 25.1 AND 32.1

ORDERED that:

1. On August 5, 2019, the Court of Criminal Appeals (Misc. Docket No. 19-007) and the Supreme Court of Texas (Misc. Docket No. 19-9061) approved amendments to Rules of Appellate Procedure 13.5, 25.1, and 32.1, to be effective September 1, 2019, and invited public comment.

2. The comment period has expired, and no additional changes have been made to the rules. This order gives final approval to the amendments set forth in Court of Criminal Appeals Misc. Docket No. 19-007 and Supreme Court of Texas Misc. Docket No. 19-9061.

3. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 11, 2020

Sharon Keller, Presiding Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge

Mary Lou Keel, Judge

Scott Walker, Judge

Michelle M. Slaughter, Judge

TRD-202000720
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: February 19, 2020

♦ ♦ ♦

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 20-004

ORDER ADOPTING TEXAS RULES OF APPELLATE PROCEDURE 25.2 AND 32.2

ORDERED that:

1. On September 9, 2019, the Court of Criminal Appeals signed Miscellaneous Docket Order 19-008 proposing amendments to the Texas Rules of Appellate Procedure 25.2 and 32.2 and invited public comments. The public comment period has expired.

2. This Court has reviewed any comments received. This order incorporates all revisions and contains the final version of these rule amendments.

3. The Clerk is directed to:

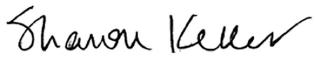
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

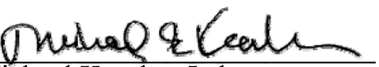
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

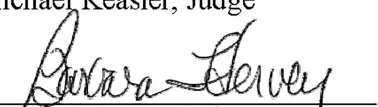
Dated: February 11, 2020



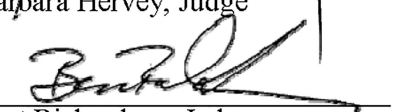
Sharon Keller, Presiding Judge



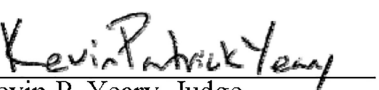
Michael Keasler, Judge



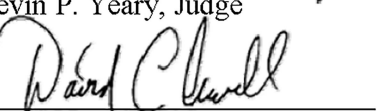
Barbara Hervey, Judge



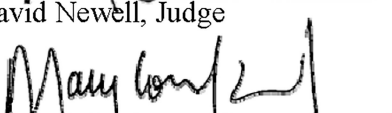
Bert Richardson, Judge



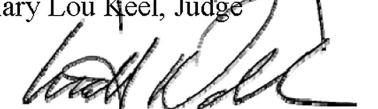
Kevin P. Yeary, Judge



David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge

Michelle M. Slaughter, Judge

Rule 25. Perfecting Appeal

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25.2. Criminal Cases

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(e) *Trial Court Clerk's Duties.* The trial court clerk must note on the copies of the notice of appeal and the trial court's certification of the defendant's right of appeal the case number and the date when each was filed. The clerk must then immediately deliver one copy of each to the clerk of the appropriate court of appeals, to the trial judge, to each court reporter responsible for preparing the reporter's record, and, if the defendant is the appellant, one copy of each to the State's attorney.

Rule 32. Docketing Statement

***

32.2. Criminal Cases

Upon perfecting the appeal in a criminal case, the appellant must file in the appellate court a docketing statement that includes the following information:

***

(m) the name, mailing address, telephone number, fax number (if any), email address, and Certified Shorthand Reporter number of each court reporter responsible for preparing the reporter's record;

***

TRD-202000721
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: February 19, 2020

♦ ♦ ♦

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a change to its name was received from FedStar Credit Union, College Station, Texas. The credit union is proposing to change its name to Brazos Star Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202000713
John J. Kolhoff
Commissioner
Credit Union Department
Filed: February 19, 2020

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Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Mobility Credit Union, Irving, Texas, to expand its field of membership. The proposal would permit members of the Texas Consumer Council to be eligible for membership in the credit union.

An application was received from Plus4 Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship and businesses located within 10 miles of 9166 FM 2920 Rd., Suite 600, Tomball, Texas, 77375, to be eligible for membership in the credit union.

An application was received from Community Resource Credit Union #1 (Baytown) to expand its field of membership. The proposal would permit persons who worship within the boundaries of the Goose Creek, Barbers Hill, Crosby, Dayton, Huffman, Humble, and New Caney Independent School Districts, to be eligible for membership in the credit union.

An application was received from Community Resource Credit Union #2 (Baytown) to expand its field of membership. The proposal would permit persons who worship within the boundaries of the area commonly known as Lynchburg, Texas, to be eligible for membership in the credit union.

An application was received from Community Resource Credit Union #3 (Baytown) to expand its field of membership. The proposal would permit persons who worship within a 10-mile radius of the Community Resource Credit Union offices located at:

-- 2900 Decker Drive, Baytown, Texas;

-- 2700 N. Alexander Drive, Baytown, Texas;

-- 6218 FM 2100, Crosby, Texas;

-- 6810 Garth Road, Baytown, Texas;

-- 11001 Eagle Drive, Mont Belvieu, Texas;

-- 6903 Atascocita Road, Humble, Texas; and

-- 8010 N. Highway 146, Baytown, Texas.

An application was received from Community Resource Credit Union #4 (Baytown) to expand its field of membership. The proposal would permit persons who worship located within the boundaries of Liberty or Chambers County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202000711
John J. Kolhoff
Commissioner
Credit Union Department
Filed: February 19, 2020

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Texell Credit Union, Temple, Texas - See *Texas Register* issue dated November 29, 2019.

Articles of Incorporation Change - Approved

Velocity Credit Union (Austin) - See *Texas Register* issue dated January 24, 2020.

Credit Union of Texas (Dallas) - See *Texas Register* issue dated January 24, 2020.

TRD-202000701
John J. Kolhoff
Commissioner
Credit Union Department
Filed: February 19, 2020

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Texas Council for Developmental Disabilities

Request for Applications: Community Inclusion Mini-Grants

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for organizations to develop projects that will identify and address barriers to full community inclusion faced by people with disabilities. To address the identified barrier, projects may

either replicate best practices or develop unique and innovative ideas. At the conclusion of the projects, grantees will demonstrate how people with disabilities in their community are more included in education, employment, or social activities. The goal of community inclusion mini-grants is to produce short- and/or long-term systems change.

TCDD has approved funding for up to 10 projects for up to $15,000 for up to 12 months. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Proposals must be submitted by 1:00 p.m. CT on Tuesday, March 31, 2020. Proposals will not be accepted after the due date.

TRD-202000700
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: February 19, 2020

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Request for Applications: Self-Advocacy Group Mini-Grants

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for projects to build the organizational capacity of local self-advocacy groups to become more established in their communities, create partnerships, conduct formal activities, and ultimately expand their role and impact. The groups will identify and achieve at least one major activity that will put them in a position to pursue more significant activities and/or grants. Applications must, at the very least, include a self-advocacy group as one of the co-applicants.

TCDD has approved funding for up to 10 projects for up to $15,000 for up to 12 months. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Proposals must be submitted by 1:00 p.m. Central Time on Tuesday, March 31, 2020. Proposals will not be accepted after the due date.

TRD-202000699
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: February 19, 2020

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Texas Education Agency

Public Notice of Texas Request of a Waiver from the Every Student Succeeds Act (ESSA) Testing Requirements for Accelerated Students

Purpose and Scope of Waiver Request. Texas is requesting a waiver from the U.S. Department of Education (USDE) to broaden the advanced mathematics exception to include all middle school students administered end-of-course (EOC) assessments in mathematics, language arts, and science.

The Texas Education Agency (TEA) has been working with the USDE on its ESSA State Plan to ensure that students continue to receive challenging coursework and that Texas schools are held accountable for improving the achievement of all students. As part of its plan, TEA is seeking to expand the advanced mathematics exception beyond Grade 8 students enrolled in advanced mathematics courses to include all middle school students who are administered an EOC assessment for mathematics, language arts, or science. This expansion would increase opportunities for all Texas student to take advanced coursework in middle school and reduce barriers to access advanced courses. If TEA receives USDE approval to expand the testing exception, then this will eliminate the need for any double testing.

As a result, Texas is seeking a waiver from testing requirements pursuant to the Elementary and Secondary Education Act of 1965 (ESEA), as amended by ESSA, §8401(b). Specifically, Texas is requesting a waiver of the ESEA, as amended by the ESSA, §1111(b)(2)(B)(v), to expand the advanced mathematics exception under §1111(b)(2)(C). The requested waiver would be effective beginning with the 2020-2021 school year through the 2023-2024 school year. A copy of the waiver request is available on the TEA website at https://tea.texas.gov/about_tea/laws_and_rules/essa/every_student_succeeds_act/.

Public Comments. The public comment period on the waiver request begins February 28, 2020, and ends March 30, 2020. Comments on the waiver request may be submitted electronically to performance.reporting@tea.texas.gov.

Further Information. For more information, contact Jamie Crowe, director of performance reporting, by mail at Performance Reporting Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9704; or by email at performance.reporting@tea.texas.gov.

Issued in Austin, Texas, on February 19, 2020.

TRD-202000715
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 19, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on

the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 30, 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 **March 30, 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: Alon USA, LP; DOCKET NUMBER: 2019-1558-AIR-E; IDENTIFIER: RN100250869; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: oil refinery; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit Number O1505, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to report all instances of deviations; PENALTY: $437; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: Alto Frio Baptist Encampment, Incorporated; DOCKET NUMBER: 2019-1516-PWS-E; IDENTIFIER: RN103779195; LOCATION: Leakey, Real County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect and report the results of nitrate sampling to the executive director (ED) for the January 1, 2018 - December 31, 2018, monitoring period; 30 TAC §290.111(e)(1)(A) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to achieve a turbidity level of combined filter effluent (CFE) that is less than 1.0 nephelometric turbidity unit (NTU); 30 TAC §290.111(e)(1)(B) and THSC, §341.0315(c), by failing to achieve a turbidity level of CFE that is less than 0.3 NTU in at least 95% of the samples tested for the month of July 2019; and 30 TAC §290.118(c) and (e), by failing to collect and report the results of secondary constituent sampling to the ED for the January 1, 2016 - December 31, 2018, monitoring period; PENALTY: $645; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2019-0356-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 36644, N007M1, and PSDTX903M5, Special Conditions Number 1, Federal Operating Permit (FOP) Number O2551, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 23, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O2551, GTC and STC Number 2.F, and 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 §101.201(c) and §122.143(4), FOP Number O2551, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: $29,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,650; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: CHATT Water Supply Corporation; DOCKET NUMBER: 2019-1501-PWS-E; IDENTIFIER: RN101440931; LOCATION: Abbott, Hill County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(3)(G), by failing to obtain an exception, in accordance with 30 TAC §290.39(l), prior to using blended water containing free chlorine and water containing chloramines; PENALTY: $250; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Aransas Pass; DOCKET NUMBER: 2019-1451-PWS-E; IDENTIFIER: RN102315173; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; PENALTY: $2,142; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: City of Floresville; DOCKET NUMBER: 2019-1507-PWS-E; IDENTIFIER: RN101392124; LOCATION: Floresville, Wilson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $180; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: City of Joaquin; DOCKET NUMBER: 2019-1012-PWS-E; IDENTIFIER: RN101226686; LOCATION: Joaquin, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to collect, within 24 hours of the routine distribution total coliform-positive samples 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 during the month of January 2018; PENALTY: $310; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: City of Nacogdoches; DOCKET NUMBER: 2019-0864-PWS-E; IDENTIFIER: RN101264778; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly (BPA), as identified in 30 TAC §290.47(f); and 30 TAC §290.44(h)(4), by failing to have all BPAs tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; PENALTY: $1,224; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: City of Pflugerville; DOCKET NUMBER: 2019-0614-MWD-E; IDENTIFIER: RN101611440; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011845002, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge, sludge use, disposal, or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: $33,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $33,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: City of Venus; DOCKET NUMBER: 2019-1556-PWS-E; IDENTIFIER: RN101384618; LOCATION: Venus, Johnson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director (ED) by the tenth day of the month following the end of the quarter for the second quarter of 2019; 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligram per liter for haloacetic acids (HAA5) based on the locational running annual average; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for HAA5 based on the running annual average for the second quarter of 2019; 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 failed to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for the calendar year of 2018; PENALTY: $652; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Elderville Water Supply Corporation; DOCKET NUMBER: 2019-1652-PWS-E; IDENTIFIER: RN101439966; LOCATION: Longview, Gregg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the locational running annual average; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: FLO COMMUNITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-1564-PWS-E; IDENTIFIER: RN101440949; LOCATION: Buffalo, Leon County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $5,120; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: H2 Transport, LLC; DOCKET NUMBER: 2019-1446-PST-E; IDENTIFIER: RN110834892; LOCATION: Sweetwater, Nolan County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to ensure that the operator possessed a valid and current TCEQ Delivery Certificate prior to depositing a regulated substance into a regulated underground storage tank system; PENALTY: $17,834; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: International Paper Company; DOCKET NUMBER: 2018-0719-AIR-E; IDENTIFIER: RN100214428; LOCATION: Orange, Orange County; TYPE OF FACILITY: pulp and paperboard mill; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 9654A, PSDTX833M3, and N60M2, Special Conditions Number 1, Federal Operating Permit Number O1408, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate during a stack test; PENALTY: $2,925; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: JHJ Dream Homes of Texas, LP dba Grand Endeavor Homes; DOCKET NUMBER: 2019-1546-WQ-E; IDENTIFIER: RN110829694; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of concrete washout water into or adjacent to any water in the state; PENALTY: $1,876; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(16) COMPANY: Longhorn Horizon, Incorporated dba Star One; DOCKET NUMBER: 2019-1284-PST-E; IDENTIFIER: RN101463180; LOCATION: Godley, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for underground storage tanks (USTs) at the facility; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: $7,648; ENFORCEMENT CO-

ORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Montesino Developments, LLC dba Cash Register Services; DOCKET NUMBER: 2019-1263-PWS-E; IDENTIFIER: RN106182207; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director (ED) 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)(A) and TCEQ Agreed Order Docket Number 2016-0069-PWS-E, Ordering Provision Numbers 2.g and 2.h, by failing to submit well completion data for review and approval prior to placing the facility's well Number 1 into service as a public water supply source; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: $854; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: Rainbow Ranch of Texas, L.L.C.; DOCKET NUMBER: 2019-1660-PWS-E; IDENTIFIER: RN110118643; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1) and TCEQ Agreed Order Docket Number 2018-0253-PWS-E, Ordering Provision Number 2.c.i, by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: $60; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2019-0874-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 751 and PSDTX987, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1583, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates (MAERs); 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 723 and PSDTX828M1, SC Number 1, FOP Number O2233, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), FOP Number O2233, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: $33,038; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $13,215; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: SAIF MART LLC dba Reds; DOCKET NUMBER: 2019-1151-PST-E; IDENTIFIER: RN101808251; LOCATION: League City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to conduct the required annual Stage I testing; and 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; PENALTY: $1,876; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Trent Denman; DOCKET NUMBER: 2019-1274-WR-E; IDENTIFIER: RN110824976; LOCATION: Hamilton, Hamilton County; TYPE OF FACILITY: water diversion point; RULE VIOLATED: 30 TAC §304.32(a)(1), by failing to submit to the watermaster a declaration expressing the diverter's intent 24 hours prior to diverting state water; PENALTY: $260; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Zachry Construction Corporation; DOCKET NUMBER: 2019-1512-WQ-E; IDENTIFIER: RN109923789; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and TCEQ General Permit Number TXG112370, Part III, Section A, Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Chris Moreno, (254) 761-3038; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202000692
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 18, 2020

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Notice of a Proposed Renewal with Amendment of General Permit WQG100000 Authorizing the Disposal of Wastewater

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew and amend State Only General Permit WQG100000. This general permit authorizes wastewater generated by industrial or water treatment facilities to be disposed of by evaporation from surface impoundments adjacent to water in the state. This general permit does not authorize the discharge of wastewater into water in the state. The draft general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

DRAFT GENERAL PERMIT. The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes wastewater generated by industrial or water treatment facilities to be disposed of by evaporation from surface impoundments adjacent to water in the state. This general permit does not authorize the discharge of wastewater into water in the state. No significant degradation of high quality waters is expected, and existing uses will be maintained and protected. The executive director proposes to require a Notice of Intent to obtain authorization under this general permit.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These

documents will also be available at the TCEQ's 16 regional offices and on the TCEQ's website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this draft general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the draft general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the draft general permit or if requested by a state legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the TCEQ's Austin office. A notice of the commissioners' action on the draft general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov.*

Further information may also be obtained by calling Laurie Fleet, TCEQ Water Quality Division, at (512) 239-5445.

Si desea información en español, puede llamar (800) 687-4040.

TRD-202000643
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 14, 2020

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40307

Application. Diversified Waste Management, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40307, to construct and operate a Medical Waste Processing Facility. The proposed facility, Diversified Waste Management, Inc. will be located 13511 Indian Hill Road, Amarillo, Texas 79124, in Potter County. The Applicant is requesting authorization to store, treat, and transfer medical waste; and to store and transfer trace chemotherapy waste and non-hazardous pharmaceutical waste. The registration application is available for viewing and copying at the Southwest Amarillo Public Library located at 6801 Southwest 45th Street, Amarillo, Texas 79109 and may be viewed online at https://www.gdsassociates.com/txprojects. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=35.190972&lng=-101.99622&zoom=13&type=r. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *www14.tceq.texas.gov/epic/eComment/* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk,

MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, *www.tceq.texas.gov/goto/pep.* General information regarding the TCEQ can be found on our website at *www.tceq.texas.gov/.* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Diversified Waste Management, Inc. at the address stated above or by calling Mr. Brandon Brown, Owner, at (806) 371-0120.

TRD-202000703
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Correction to Agreed Order Number 7

In the January 10, 2020, issue of the *Texas Register* (45 TexReg 426), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 7, for IEA CONSTRUCTORS LLC, Docket Number 2019-1732-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2019-1732-WR-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202000693
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 18, 2020

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Notice of Hearing Charles J. Carter: SOAH Docket No. 582-20-2496; TCEQ Docket No. 2020-0079-LIC

APPLICATION.

Charles J. Carter, 7401 Oberon Street, Austin, Texas 78741, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Landscape Irrigation Technician License. The Executive Director denied Mr. Carter's application for cause. Mr. Carter has requested a formal hearing on the Executive Director's decision. During the review of Mr. Carter's application, the Executive Director discovered that Mr. Carter was placed on deferred adjudication for a State Jail Felony in 2013. The Executive Director denied Mr. Carter's application because he considers Mr. Carter to have been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. - March 18, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Carter should be issued a Landscape Irrigation Technician License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Charles J. Carter fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. General information about SOAH can be found on its website at www.soah.texas.gov/index.asp, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: February 14, 2020

TRD-202000705

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Hearing Donnell Baldwin: SOAH Docket No. 582-20-2364; TCEQ Docket No. 2020-0070-LIC

APPLICATION. Donnell Baldwin, 675 County Road 6471, Dayton, Texas 77535, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Operator License. The Executive Director denied Mr. Baldwin's application for cause. Mr. Baldwin has requested a formal hearing on the Executive Director's decision. During the review of Mr. Baldwin's application, the Executive Director discovered that Mr. Baldwin pleaded guilty to and was placed on deferred adjudication for two Second Degree Felonies in 2001. The Executive Director denied Mr. Baldwin's application because he considers Mr. Baldwin to have been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation and because Mr. Baldwin has been convicted of a sexually violent offense.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing on this application at:

10:00 a.m. - March 16, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Baldwin should be issued a Water Operator License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Donnell Baldwin fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled, and that appeal of the Executive Director's decision be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Hollis Henley, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our web site at *www.tceq.texas.gov.* General information about SOAH can be found on its website at *www.soah.texas.gov/index.asp,* or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *www.tceq.texas.gov/goto/efilings* **or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* **or in printed format upon request to SOAH."**

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: February 14, 2020

TRD-202000704
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Hearing Texas Regional Landfill Company, LP: SOAH Docket No. 582-20-2569; TCEQ Docket No. 2019-1806-MSW; Proposed Permit No. 1841B

APPLICATION.

Texas Regional Landfill Company, LP, 3 Waterway Square Place, Suite 550, The Woodlands, Texas 77380 has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the expansion of the Travis County Landfill, a Type IV municipal solid waste (MSW) landfill in Travis County, Texas. The facility is located at 9600 FM 812, Austin, Travis County, Texas 78719. The TCEQ received this application on November 26, 2018. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: *https://arcg.is/1bzbmH.* For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Elroy Library, 13512 FM 812, Del Valle, Travis County, Texas 78617. The permit application may be viewed online at: https://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_posted_apps.html.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on August 22, 2019, in English and Spanish. On December 20, 2019, the Applicant filed a request for direct referral to the State Office of Admin-

istrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - March 26, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 330; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. The mailing address for the TCEQ is P.O. Box 13087, Austin Texas 78711-3087.

Further information may also be obtained from Texas Regional Landfill Company, LP at the address stated above or by calling Mr. Brett O'Connor at (832) 442-2920.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: February 14, 2020

TRD-202000706
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of BNSF Railway Company and Fort Worth & Western Railroad Company: SOAH Docket No. 582-20-2027; TCEQ Docket No. 2018-1589-AIR-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 19, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 26, 2019 concerning assessing administrative penalties against and requiring certain actions of BNSF Railway Company and Fort Worth & Western Railroad Company, for violations in Hood County, Texas, of: Tex. Health & Safety Code §382.085(a) and (b) and 30 Tex. Admin. Code §101.4.

The hearing will allow BNSF Railway Company and Fort Worth & Western Railroad Company, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford BNSF Railway Company and Fort Worth & Western Railroad Company, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of BNSF Railway Company and Fort Worth & Western Railroad Company to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** BNSF Railway Company and Fort Worth & Western Railroad Company, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 382, and 30 Tex. Admin. Code chs. 70 and 101; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *www.tceq.texas.gov/goto/efilings* **or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* **or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 14, 2020

TRD-202000707
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of City of Sanger: SOAH Docket No. 582-20-1626; TCEQ Docket No. 2018-0273-MWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 19, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 3, 2019 concerning assessing administrative penalties against and requiring certain actions of City of Sanger, for violations in Denton County, Texas, of: Tex. Water Code §26.121(a)(1), 30 Texas Administrative Code §305.125(1), (5), (11)(B), and (17) and §319.7(c) and (d), and TPDES Permit No. WQ0014372001, Interim Effluent Limitations and Monitoring Requirements Nos. 1, 2, 4, and 6, Operational Requirements No. 1, and Monitoring and Reporting Requirements Nos. 1, 3.b, and 7.c.

The hearing will allow City of Sanger, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford City of Sanger, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of City of Sanger to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.**

City of Sanger, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 70, 305, and 319; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 14, 2020

TRD-202000708
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Jackie Reaves: SOAH Docket No. 582-20-2255; TCEQ Docket No. 2019-0297-IHW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 19, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 2, 2019 concerning assessing administrative penalties against and requiring certain actions of Jackie Reaves, for violations in Wise County, Texas, of: Tex. Water Code §26.121 (a)(1) and 30 Texas Administrative Code §335.4.

The hearing will allow Jackie Reaves, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Jackie Reaves, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Jackie Reaves to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.**

Jackie Reaves, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 335; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Audrey Liter, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilingsor sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 14, 2020

TRD-202000709
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 7

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 7, Memoranda of Understanding, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

This rulemaking proposes to repeal §7.117, which adopts by reference the Memorandum of Understanding (MOU) between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ) as codified in the RRC Oil and Gas Division rules at 16 TAC §3.30. This rulemaking also proposes to adopt the current text of the MOU under new §7.117 and amend the text of the current MOU (in 16 TAC §3.30) to implement House Bill (HB) 2230 (84th Texas Legislature, 2015, and HB 2771 (86th Texas Legislature, 2019).

The commission will hold a public hearing on this proposal in Austin, Texas on March 23, 2020, at 10:00 a.m. in Building E, Room 201S, at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. 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 2020-016-007-LS. The comment period closes March 30, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Kathy Humphreys, Environmental Law Division, (512) 239-3417.

TRD-202000595
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 13, 2020

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 342

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 342, Regulation of Certain Aggregate Production Operations, §342.26, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 907, 86th Texas Legislature, 2019, relating to the increased maximum annual registration fee for aggregate production operations in the state.

The commission will hold a public hearing on this proposal in Austin on March 24, 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.

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 2019-130-342-OW. The comment period closes on March 30, 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 Shelby Williams, Water Quality Assessment Section, (512) 239-4968.

TRD-202000599
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 13, 2020

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Notice of Public Meeting For an Air Quality Permit: Permit Number: 41849

APPLICATION. Martin Marietta Materials Southwest, LLC, 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234-6007, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to and renewal of Air Quality Permit Number 41849, which would authorize modification to a Rock Crushing Plant located at 5529 Highway 27, Center Point, Kerr County, Texas 78010. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-99.066111%2C29.956666&level=12. The existing facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, March 23, 2020 at 7:00 p.m.

Hill Country Youth Event Center (Exhibition Hall) 3785 TX-27

Kerrville, Texas 78028

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ San Antonio regional office, and at Butt-Holdsworth Memorial Library, 505 Water Street, Kerrville, Kerr County, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas. Further information may also be obtained from Martin Marietta Materials Southwest, LLC at the address stated above or by calling Mrs. Leslie Mackay, Environmental Engineer at (210) 208-4067.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: February 18, 2020

TRD-202000710
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Permit No. 2281A

Application. The City of Shamrock, 116 W. 2nd Street, Shamrock, Wheeler County, Texas 79079, a Type I arid exempt municipal solid waste landfill, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize an expansion of the existing landfill. The facility is located 1.5 miles northwest of

the City of Shamrock and the intersection of Interstate 40 and US Highway 83 on County Road 15. The TCEQ received this application on December 23, 2019. The permit application is available for viewing and copying at the City of Shamrock, City Hall, 116 W. 2nd Street, Shamrock, Texas 79079. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-100.26833%2C35.25083&level=12. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *www14.tceq.texas.gov/epic/eComment/* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *www.tceq.texas.gov/goto/pep.* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from The City of Shamrock at the address stated above or by calling Mr. Tommye Cole, City Manager at (806) 256-3281.

TRD-202000702
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

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Notice of Water Quality Application

The following notice was issued on February 18, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor modification of Texas Pollutant Discharge Elimination System Permit No. WQ0014296001 issued to Corix Utilities (Texas) Inc. to correct a typographical error and change the EPA ID No. TX0124384 to EPA ID No. TX0124389. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 230,000 gallons per day. The facility is located at 1062 County Road 2509, in the City of Lometa, Lampasas County, Texas 76853.

TRD-202000712
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 19, 2020

♦ ♦ ♦

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due April 30, 2019

Tyran Paul Lee, 18551 Timber Forest Dr. #B11, Humble, Texas 77346

William Wilson, 610 Runners Ridge, Pflugerville, Texas 78660

Deadline: Personal Financial Statement due July 1, 2019

Rhetta A. Bowers, 5406 Alazan Bay Dr., Rowlett, Texas 75089

Deadline: Personal Financial Statement due October 31, 2019

James A. Armstrong III, 1839 Leath St., Dallas, Texas 75212

Adrian Garcia, P.O. Box 10087, Houston, Texas 77018

Deadline: Monthly Report Due October 7, 2019 for Committees

Hosseh Enad, Houston GLBT Political Caucus PAC, 401 Branard St. Office 100A, Houston, Texas 77006

Prisylla Ann Jasso, Strategic International Development PAC, 612 W. Nolana, Suite 250, McAllen, Texas 78504

Deadline: 30 day Pre-Election Report Due October 7, 2019 for Committees

James T. Byers, Montgomery County Tea Party PAC, 10204 Forest Glade Ct., Conroe, Texas 77385

Florette E. Spires, Vote Yes Beeville ISD, P.O. Box 4249, Beeville, Texas 78104

Deadline: 8 day Pre-Election Report Due October 28, 2019 for Committees

Rebecca Hatch, Restaurant & Beverage Alliance of Texas, 1766 FM 967, Ste. C, Buda, Texas 78610

Florette E. Spires, Vote Yes Beeville ISD, P.O. Box 4249, Beeville, Texas 78104

Deadline: Monthly Report Due November 5, 2019 for Committees

Prisylla Ann Jasso, Strategic International Development PAC, 612 W. Nolana, Ste. 250, McAllen, Texas 78504

Regina A. Tyroch, Whistle Political Action Committee Incorporated dba Whistle PAC, 17424 W. Grand Pkwy., Ste. 160, Sugar Land, Texas 77479

Deadline: Monthly Report Due December 5, 2019 for Committees

Hosseh Enad, Houston GLBT Political Caucus PAC, 401 Branard St., Office 100A, Houston, Texas 77006

Peter Hwang, Houston 80-20 PAC, 8300 Bender Rd., Humble, Texas 77396

Prisylla Ann Jasso, Strategic International Development PAC, 612 W. Nolana, Ste. 250, McAllen, Texas 78504

Chuck Rice, Jr., Texas Land Developers Association PAC, 909 Garner Ave., Austin, Texas 78704

Regina A. Tyroch, Whistle Political Action Committee Incorporated d/b/a Whistle PAC, 17424 W. Grand Pkwy., Ste. 160, Sugar Land, Texas 77479

TRD-202000594
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: February 13, 2020

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Texas Facilities Commission

Request for Proposals (RFP) No. 303-1-20687

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) No. 303-1-20687. TFC seeks a five (5) or ten (10) year lease of approximately 4,879 square feet of office space in Mount Pleasant, Texas.

The deadline for questions is March 20, 2020, and the deadline for proposals is April 3, 2020, at 3:00 p.m. The award date is June 18, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://www.txsmartbuy.com/spdetails/view/303-1-20687.

TRD-202000690
Rico Gamino
Director of Procurement
Texas Facilities Commission
Filed: February 14, 2020

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Texas Higher Education Coordinating Board

Correction of Error

The Texas Higher Education Coordinating Board proposed amendments to 19 TAC §§7.3 - 7.8, 7.11 and new §7.16, concerning General Provisions, in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6191). Due to an error by the Texas Register, the text for 19 TAC §7.8 was published incorrectly. The incorrect text was published as "(3) (No Change)". However, it should have read "(3) - (9) (No Change)". The amendment is being adopted in another section of this issue of the *Texas Register.*

TRD-202000724

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Request for Proposals: Financial Advisory Services for Student Loan Program

RFP Number 781-0-22925

The Texas Higher Education Coordinating Board (THECB) is seeking Request for proposals from qualified respondents to establish a contract for Financial Advisory Services, in accordance with the requirements

contained in this Request for Proposals (RFP). The Financial Advisory Services provide support for the student loan and related bond program.

Scope of Work:

The financial advisor shall be responsible for all duties and services necessary to facilitate the issuance of bonds and other debt obligations by the Board. The financial advisor shall be responsible for all required calculations including a calculation of arbitrage yield, arbitrage liability and yield restriction liability requirements not less than annually for each issue of outstanding obligations to be listed on Attachment F - Mandatory Price Sheet. Bonds issued subsequent to this RFP may require computations and related services during the term of any contract issued.

RFP documentation may be obtained by contacting:

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, TX 78711-2788

(512) 427-6142

Theresa.lopez@thecb.state.tx.us

RFP documentation is also located on the THECB's website at: http://www.thecb.state.tx.us/about-us/procurement/ and the Electronic State Business Daily at http://www.txsmartbuy.com/sp.

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. Central Time on March 30, 2020.

TRD-202000719
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 19, 2020

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Request for Qualifications: Bond and Student Loan Program Counsel

RFQ Number 781-0-22923

The Texas Higher Education Coordinating Board (THECB) is issuing a Request for Qualifications (RFQ) to employ Bond and Program Counsel to assist the Board in the issuance of bonds and to provide general program assistance when needed in accordance with guidance promulgated by the Attorney General of the State of Texas pursuant to Sections 402.0212 and 2254.154 of the Texas Government Code, and 1 TAC Chapter 57.

The THECB is a state agency with Board members appointed by the Governor. Bonds are issued to fund the THECB's Hinson Hazelwood student loan program. The enabling acts, Chapter 52 and Chapter 56, Texas Education Code, as amended, provide for the administration of the programs by the THECB. Historically, the student loan program has provided funding through the repayment of student loans and earnings in amounts sufficient to meet debt service and reserve requirements and to pay administrative costs of the student loan program without drawing on the State's General Revenue Fund. The THECB uses bond proceeds to fund the loan program. The program provides low interest loans to eligible students seeking an undergraduate education and/or graduate or professional education through public and independent institutions of higher education in Texas.

Scope of Work:

Outside Counsel shall perform all usual and necessary legal services as Bond Counsel in connection with the authorization, issuance and delivery of each installment or series of Securities, including related tax law services. Outside Counsel shall prepare and direct the legal proceedings and perform the other necessary legal services with reference to the authorization, issuance and delivery of each installment or series of Securities.

RFQ documentation may be obtained by contacting:

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, TX 78711-2788

(512) 427-6142

Theresa.lopez@thecb.state.tx.us

RFQ documentation is also located on the THECB's website at: http://www.thecb.state.tx.us/about-us/procurement/ and the Electronic State Business Daily at http://www.txsmartbuy.com/sp.

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. Central Time on March 30, 2020.

TRD-202000718
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: February 19, 2020

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Sutton National Insurance Company, a foreign fire and/or casualty company. The home office is in Madison, Wisconsin.

Application for Podiatry Insurance Company of America, a foreign fire and/or casualty company, to change its name to ProAssurance Insurance Company of America. The home office is in Springfield, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202000714
James Person
General Counsel
Texas Department of Insurance
Filed: February 19, 2020

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Notice of Public Hearing

Texas Windstorm Insurance Association - Dwelling and Commercial Policy Form Filings

Reference Numbers: P-0220-01 and P-0220-02

SERFF State Tracking Numbers: S675887 and S675888

Pursuant to 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed forms with the Texas Department of Insurance for approval:

--revised Commercial Policy; and

--revised Dwelling Policy.

The revisions are part of TWIA's efforts to implement Senate Bill 615, 86th Legislature, Regular Session (2019), which authorizes supplemental payments and requires TWIA to include a notice about the availability of these supplemental payments in its policies beginning July 1, 2020.

You can get a copy of the filings from the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or online at www.tdi.texas.gov/submissions/indextwia.html#form.

Public Comment: Send comments on the filings to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 by 5:00 p.m., Central time, on March 18, 2020.

Hearing Requests: To request a public hearing, you must submit a request separately by 5:00 p.m., Central time, on March 9, 2020. Send the request for a hearing by email to ChiefClerk@tdi.texas.gov, or by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-202000695
James Person
General Counsel
Texas Department of Insurance
Filed: February 18, 2020

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Comment on Proposed New DWC Form-121

The Texas Department of Insurance, Division of Workers' Compensation (DWC) is accepting public comment on a proposed new form: DWC Form-121, *Claim Administration Contact Information.*

Insurance carriers, including certified self-insurers, certified self-insurer groups, and governmental entities will be required to use DWC Form-121 to provide new or updated claim administration contact information through their Austin representative. Insurance carriers must update this information within 10 working days after making a change. Texas Administrative Code, Title 28, Section 124.2(r)(1) requires insurance carriers to provide contact information for:

--coverage verification (policy issuance and effective dates of policy);

--claims adjustment;

--medical billing;

--pharmacy billing (if different from medical billing); and

--preauthorization.

The proposed form is available on the TDI website. You may submit written comments on the form to RuleComments@tdi.texas.gov, or mail your comments to:

Cynthia Guillen

Legal Services, MS - 4D

Texas Department of Insurance, Division of Workers' Compensation

7551 Metro Center Drive, Suite 100

Austin, Texas 78744-1645

The deadline to submit comments is 5:00 p.m., Central Time, Monday, February 24, 2020.

TRD-202000674
Kara Mace
Deputy Commissioner
Texas Department of Insurance
Filed: February 14, 2020

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2227 "$1,000,000 GOLDEN RICHES"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2227 is "$1,000,000 GOLDEN RICHES". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2227 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2227.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, GOLD BAR SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $50.00, $75.00, $100, $150, $200, $250, $300, $500, $1,000, $2,000, $10,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2227 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO

43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
61	SXON
62	SXTO
GOLD BAR SYMBOL	WIN$
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$150	ONFF
$200	TOHN
$250	TOFF
$300	THHN
$500	FVHN
$1,000	ONTH
$2,000	TOTH
$10,000	10TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2227), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2227-0000001-001.

H. Pack - A Pack of the "$1,000,000 GOLDEN RICHES" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$1,000,000 GOLDEN RICHES" Scratch Ticket Game No. 2227.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$1,000,000 GOLDEN RICHES" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eighty-eight (88) Play Symbols. BONUS QUICK WIN: If a player reveals two matching prize amounts in the same BONUS QUICK WIN, the player wins that amount. MAIN PLAY AREA: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "GOLD BAR" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly eighty-eight (88) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly eighty-eight (88) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the eighty-eight (88) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty-eight (88) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-nine (39) times.

D. GENERAL: The "GOLD BAR" (WIN$), "2X" (WINX2), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in any of the four (4) BONUS QUICK WIN play areas.

E. GENERAL: The $50 Prize Symbol will only appear on winning Tickets in which the $50 prize is part of a winning pattern.

F. BONUS QUICK WIN: A Ticket can win up to one (1) time in each of the four (4) BONUS QUICK WIN play areas.

G. BONUS QUICK WIN: Winning and Non-Winning Tickets will not contain more than two (2) matching Prize Symbols across the four (4) BONUS QUICK WIN play areas, excluding Tickets winning thirty-nine (39) times, where the BONUS QUICK WIN areas will win exactly two (2) $100 prizes and exactly two (2) $500 prizes.

H. BONUS QUICK WIN: Non-winning Prize Symbols in a BONUS QUICK WIN play area will not be the same as winning Prize Symbols from another BONUS QUICK WIN play area.

I. BONUS QUICK WIN: A non-winning BONUS QUICK WIN play area will have two (2) different Prize Symbols.

J. MAIN PLAY AREA: A Ticket can win up to thirty-five (35) times in the main play area.

K. MAIN PLAY AREA: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

L. MAIN PLAY AREA: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

M. MAIN PLAY AREA: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

N. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

O. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

P. MAIN PLAY AREA: On winning and Non-Winning Tickets, the top cash prizes of $2,000, $10,000 and $1,000,000 will each appear at least once, with respect to other parameters, play action or prize structure.

Q. MAIN PLAY AREA: The "GOLD BAR" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

R. MAIN PLAY AREA: The "GOLD BAR" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

S. MAIN PLAY AREA: The "GOLD BAR" (WIN$) Play Symbol will win the PRIZE for that Play Symbol.

T. MAIN PLAY AREA: The "GOLD BAR" (WIN$) Play Symbol will never appear more than once on a Ticket.

U. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

V. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

W. MAIN PLAY AREA: The "2X" (WINX2) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

X. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

Z. MAIN PLAY AREA: The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

AA. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

BB. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

CC. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will win 10 TIMES the PRIZE for that Play Symbol and will win as per the structure.

DD. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

EE. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

FF. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

GG. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will win 20 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

HH. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

II. MAIN PLAY AREA: The "GOLD BAR" (WIN$) and "2X" (WINX2) Play Symbols will never appear on the same Ticket.

JJ. MAIN PLAY AREA: The "GOLD BAR" (WIN$) and "5X" (WINX5) Play Symbols will never appear on the same Ticket.

KK. MAIN PLAY AREA: The "GOLD BAR" (WIN$) and "10X" (WINX10) Play Symbols will never appear on the same Ticket.

LL. MAIN PLAY AREA: The "GOLD BAR" (WIN$) and "20X" (WINX20) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "$1,000,000 GOLDEN RICHES" Scratch Ticket Game prize of $75.00, $100, $150, $200, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $75.00, $100, $150, $200, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$1,000,000 GOLDEN RICHES" Scratch Ticket Game prize of $2,000, $10,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1,000,000 GOLDEN RICHES" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$1,000,000 GOLDEN RICHES" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$1,000,000 GOLDEN RICHES" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 2227. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2227 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$75.00	567,000	8.89
$100	378,000	13.33
$150	189,000	26.67
$200	81,480	61.86
$250	181,020	27.84
$500	34,020	148.15
$2,000	1,764	2,857.14
$10,000	200	25,200.00
$1,000,000	4	1,260,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.52. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2227 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2227, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202000696
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 18, 2020

♦ ♦ ♦

Supreme Court of Texas

Final Approval of Amendments to Texas Rules of Appellate Procedure 13.5, 25.1, And 32.1 (Joint Order, Court of Criminal Appeals Misc. Docket No. 20-003)

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9025

FINAL APPROVAL OF AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 13.5, 25.1, AND 32.1

ORDERED that:

1. On August 5, 2019, the Supreme Court of Texas (Misc. Docket No. 19-9061) and the Court of Criminal Appeals (Misc. Docket No. 19-007) approved amendments to Rules of Appellate Procedure 13.5, 25.1, and 32.1, to be effective September 1, 2019, and invited public comment.

2. The comment period has expired, and no additional changes have been made to the rules. This order gives final approval to the amendments set forth in Supreme Court of Texas Misc. Docket No. 19-9061 and Court of Criminal Appeals Misc. Docket No. 19-007.

3. The Clerk is directed to:

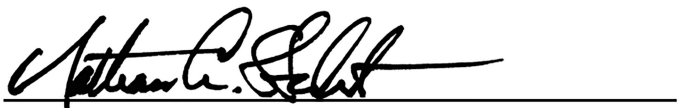
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

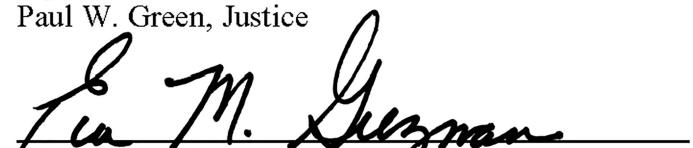
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 11, 2020

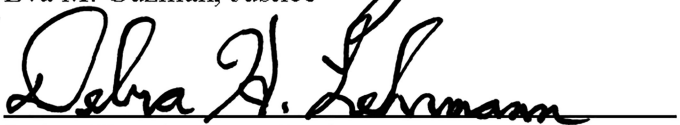


Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

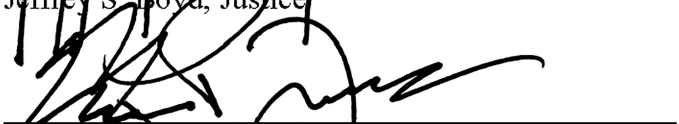


Eva M. Guzman, Justice



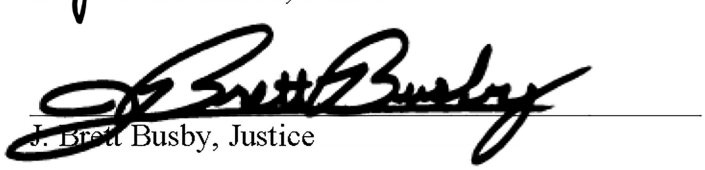
Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice



John P. Devine, Justice

James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

TRD-202000722
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 19, 2020

♦ ♦ ♦

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9026

ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE 25.2 AND 32.2

ORDERED that:

1. By order dated September 9, 2019, in Misc. Docket No. 19-008, the Court of Criminal Appeals proposed amendments to Rules 25.2 and 32.2 of the Texas Rules of Appellate Procedure and invited public comment. This joint order contains the final version of the rules, which are effective March 1, 2020.

2. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

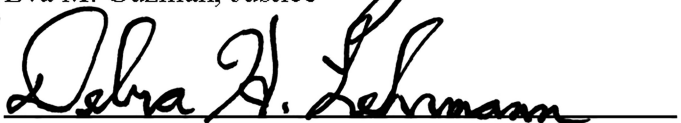
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 11, 2020

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Eva M. Guzman, Justice

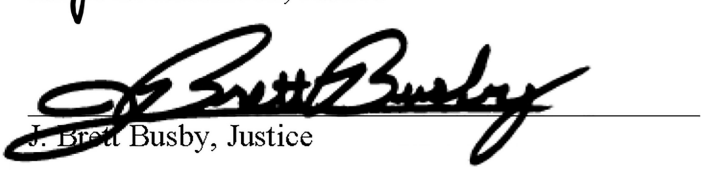


Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

TRD-202000723
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 19, 2020

♦ ♦ ♦


TEX

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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