TEXAS REGISTER

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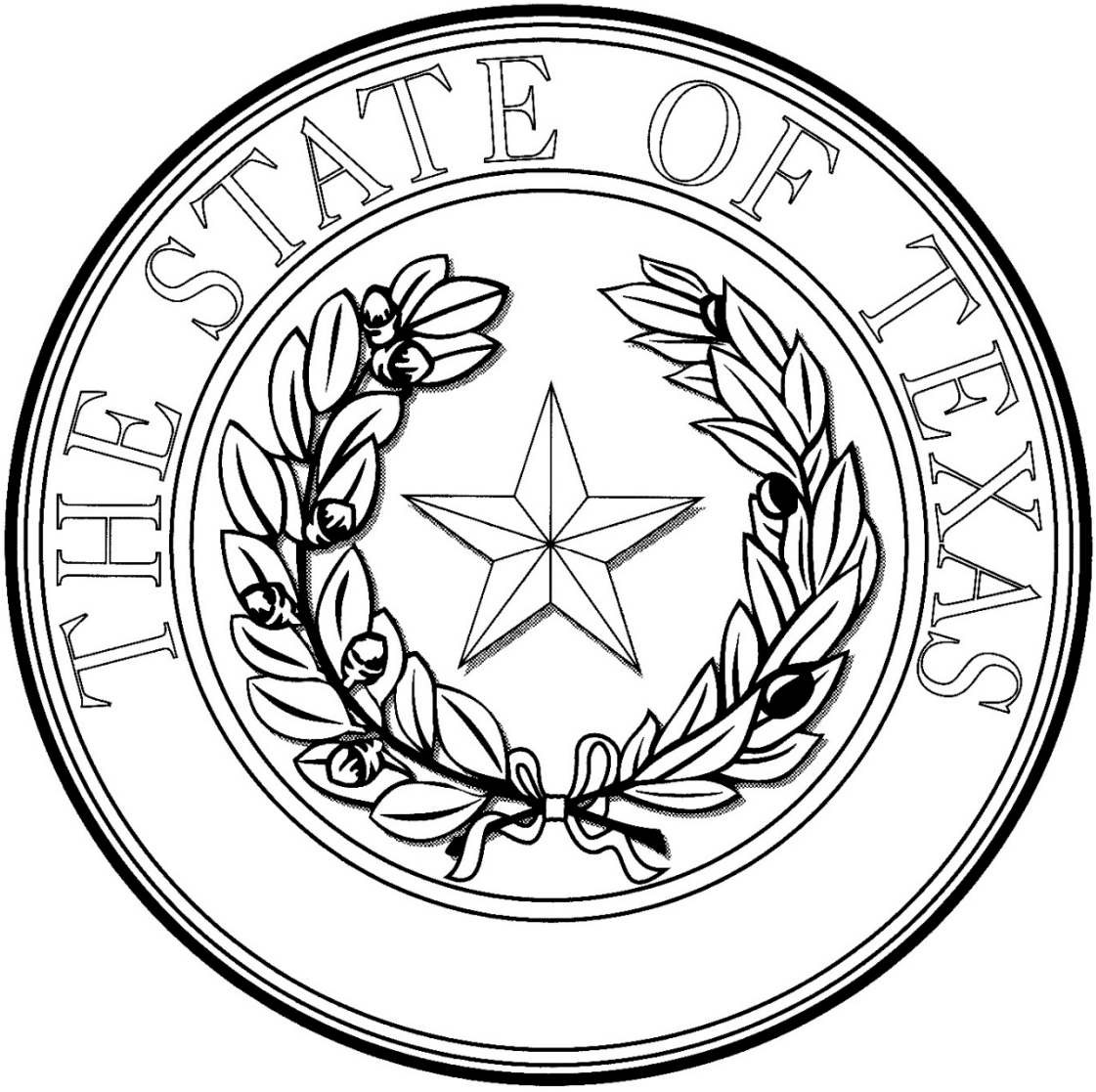

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In This Issue

THE GOVERNOR

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

Appointments

Appointments for May 4, 2020

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2021, Kenneth G. "Ken" Jordan of San Saba, Texas (Mayor Jordan is being reappointed).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2025, Jimmie Ruth Evans of San Antonio, Texas (replacing William F. Edmiston, Jr., D.V.M. of Eldorado, whose term expired).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2021, Melanie J. Johnson, Ed.D. of Houston, Texas (replacing Eric D. White of Mason, whose term expired).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2021, Barret J. Klein of Boerne, Texas (Mr. Klein is being reappointed).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2021, Joe L. Leathers of Guthrie, Texas (Mr. Leathers is being reappointed).

Appointed to the Texas Animal Health Commission, for a term to expire September 6, 2021, Thomas E. "Tommy" Oates of Huntsville, Texas (Mr. Oates is being reappointed).

Appointed to the Texas Board of Chiropractic Examiners, for a term to expire February 1, 2025, Brandon M. Allen of Austin, Texas (replacing John W. Steinberg of Marion, whose term expired).

Appointed to the Texas Board of Chiropractic Examiners, for a term to expire February 1, 2025, Michael P. Henry, D.C. of Austin, Texas (Dr. Henry is being reappointed).

Appointed to the Texas Board of Chiropractic Examiners, for a term to expire February 1, 2025, Scott D. Wofford, D.C. of Abilene, Texas (Dr. Wofford is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Christine "Tina" Yturria Buford of Harlingen, Texas (Ms. Buford is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Karen H. Harris of Austin, Texas (Ms. Harris is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Karen D. Manning of Houston, Texas (Ms. Manning is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Rienke Radler of Fort Worth, Texas (Ms. Radler is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Catherine Gilbert Susser of Corpus Christi, Texas (Ms. Susser is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Laura Koenig Young of Tyler, Texas (Ms. Young is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Starr-Renee "Starr" Corbin of Georgetown, Texas (Ms. Corbin is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Amy J. Henderson of Amarillo, Texas (Ms. Henderson is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Nathali Parker of Rosebud, Texas (Ms. Parker is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Jinous M. Rouhani of Austin, Texas (Ms. Rouhani is being reappointed).

Appointed to the Governor's Commission for Women, for a term to expire December 31, 2021, Patsy C. Wesson of Fort Worth, Texas (Ms. Wesson is being reappointed).

Designated as Chair of the Governor's Commission on Women, for a term to expire at the pleasure of the Governor, Karen H. Harris of Austin (Ms. Harris is replacing Catherine Gilbert Susser of Corpus Christi).

Designated as Vice Chair of the Governor's Commission on Women, for a term to expire at the pleasure of the Governor, Nathali Parker of Rosebud, Texas (Ms. Parker is replacing Karen H. Harris of Austin).

TRD-202001797

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Executive Order GA-21

Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code, and renewed that determination on April 17, 2020; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain obligations for Texans in accordance with the President's Coronavirus Guidelines for America, as promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC) on March 16, 2020, which called upon Americans to take actions to slow the spread of COVID-19 for 15 days; and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, based on the President's announcement that the restrictive Guidelines should extend through April 30, 2020, in light of advice from Dr. Anthony Fauci and Dr. Deborah Birx, and also based on guidance by DSHS Commissioner Dr. Hellerstedt and Dr. Birx that the spread of COVID-19 can be reduced by minimizing social gatherings; and

WHEREAS, Executive Order GA-14 superseded Executive Order GA-08 and expanded the social-distancing restrictions and other obligations for Texans, aimed at slowing the spread of COVID-19 and protecting public health and safety; and

WHEREAS, after more than two weeks of having in effect the heightened restrictions like those required by Executive Order GA-14, which had saved lives, it was clear that the disease still presented a serious threat across Texas that could persist in certain areas, but also that COVID-19 had wrought havoc on many Texas businesses and workers affected by the restrictions that were necessary to protect human life; and

WHEREAS, on April 17, 2020, I therefore issued Executive Order GA-17, creating the Governor's Strike Force to Open Texas to study and make recommendations on safely and strategically restarting and revitalizing all aspects of the Lone Star State--work, school, entertainment, and culture; and

WHEREAS, also on April 17, 2020, I issued Executive Order GA-16 to generally continue through April 30, 2020, the same social-distancing restrictions and other obligations for Texans according to federal guidelines, but also to offer a safe, strategic first step to Open Texas, including permitting retail pick-up and delivery services; and

WHEREAS, I subsequently issued Executive Order GA-18 on April 27, 2020, to expand the services that are reopened in Texas, including allowing in-store retail and dine-in restaurant services at establishments operating within specific capacity limits; and

WHEREAS, as normal business operations resume, everyone must act safely, and to that end Executive Order GA-18 and this executive order provide that all persons should follow the health protocols recommended by DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, Texas must continue to protect lives while restoring livelihoods, both of which can be achieved with the expert advice of medical professionals and business leaders; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.017(a), the "governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed $1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through May 19, 2020, subject to extension based on the status of COVID-19 in Texas and the recommendations of the Governor's Strike Force to Open Texas, the White House Coronavirus Task Force, and the CDC:

In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services or reopened services, minimize social gatherings and minimize in-person contact with people who are not in the same household. People over the age of 65, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.

"Essential services" shall consist of everything listed by the U.S. Department of Homeland Security (OHS) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.0 or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions. Requests for additions should be directed to TDEM at EssentialServices@tdem.texas.gov or by visiting the TDEM website at www.tdem.texas.gov/essentialservices.

"Reopened services" shall consist of the following to the extent they are not already "essential services:"

1. Retail services that may be provided through pick-up, delivery by mail, or delivery to the customer's doorstep.

2. In-store retail services, for retail establishments that operate at up to 25 percent of the total listed occupancy of the retail establishment.

3. Dine-in restaurant services, for restaurants that operate at up to 25 percent of the total listed occupancy of the restaurant; provided, however, that

a. this applies only to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages;

b. the occupancy limits do not apply to customers seated in outdoor areas of the restaurant; and

c. valet services are prohibited except for vehicles with placards or plates for disabled parking.

4. Movie theaters that operate at up to 25 percent of the total listed occupancy of any individual theater for any screening.

5. Shopping malls that operate at up to 25 percent of the total listed occupancy of the shopping mall; provided, however, that within shopping malls, the food-court dining areas, play areas, and interactive displays and settings must remain closed.

6. Museums and libraries that operate at up to 25 percent of the total listed occupancy; provided, however, that

a. local public museums and local public libraries may so operate only if permitted by the local government, and

b. any components of museums or libraries that have interactive functions or exhibits, including child play areas, must remain closed.

7. Services provided by an individual working alone in an office, effective until 12:01 a.m. on Monday, May 18, 2020, when this single-person office provision is superseded by the expanded office-based services provision set forth below.

8. Golf course operations.

9. Local government operations, including county and municipal governmental operations relating to permitting, recordation, and document-filing services, as determined by the local government.

10. Wedding venues and the services required to conduct weddings; provided, however, that for weddings held indoors other than at a church, congregation, or house of worship, the facility may operate at up to 25 percent of the total listed occupancy of the facility.

11. Wedding reception services, for facilities that operate at up to 25 percent of the total listed occupancy of the facility; provided, however, that the occupancy limits do not apply to the outdoor areas of a wedding reception or to outdoor wedding receptions.

12. Starting at 12:01 a.m. on Friday, May 8, 2020:

a. Cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade; provided, however, that all such salons, shops, and establishments must ensure at least six feet of social distancing between operating work stations.

b. Tanning salons; provided, however, that all such salons must ensure at least six feet of social distancing between operating work stations.

c. Swimming pools; provided, however, that (i) indoor swimming pools may operate at up to 25 percent of the total listed occupancy of the pool facility; (ii) outdoor swimming pools may operate at up to 25 percent of normal operating limits as determined by the pool operator; and (iii) local public swimming pools may so operate only if permitted by the local government.

13. Starting at 12:01 a.m. on Monday, May 18, 2020:

a. Services provided by office workers in offices that operate at up to the greater of (i) five individuals, or (ii) 25 percent of the total office workforce; provided, however, that the individuals maintain appropriate social distancing.

b. Manufacturing services, for facilities that operate at up to 25 percent of the total listed occupancy of the facility.

c. Gyms and exercise facilities and classes that operate at up to 25 percent of the total listed occupancy of the gym or exercise facility; provided, however, that locker rooms and shower facilities must remain closed, but restrooms may open.

14. For Texas counties that have filed with DSHS, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID-19, those in-store retail services, dine-in restaurant services, movie theaters, shopping malls, museums and libraries, indoor wedding venues, wedding reception services, swimming pools, services provided by office workers in offices of more than five individuals, manufacturing services, and gyms and exercise facilities and classes, as otherwise defined and limited above, may operate at up to 50 percent (as opposed to 25 percent).

15. Such additional services as may be enumerated by future executive orders or proclamations by the governor.

The conditions and limitations set forth above for reopened services shall not apply to essential services. The total listed occupancy limits described above refer to the maximum occupant load set by local or state law, but for purposes of this executive order, staff members are not included in determining operating levels except for non-essential manufacturing service providers and services provided by office workers.

Notwithstanding anything herein to the contrary, the governor may by proclamation identify any county or counties in which reopened services are thereafter prohibited, in the governor's sole discretion, based on the governor's determination in consultation with medical professionals that only essential services should be permitted in the county, including based on factors such as an increase in the transmission of COVID-19 or in the amount of COVID-19-related hospitalizations or fatalities.

In providing or obtaining essential services or reopened services, all persons (including individuals, businesses and other organizations, and any other legal entity) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus. All persons should also follow, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the President and the CDC, as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer wishing to obtain services to follow additional hygiene measures.

Religious services should be conducted in accordance with the joint guidance issued and updated by the attorney general and governor.

People shall avoid visiting bars, massage establishments, tattoo studios, piercing studios, sexually oriented businesses, or interactive amusement venues such as bowling alleys, video arcades, amusement parks, water parks, or splash pads, unless these enumerated establishments or venues are specifically added as a reopened service by proclamation or future executive order of the governor. Notwithstanding anything herein to the contrary, the governor may by proclamation add to this list of establishments or venues that people shall avoid visiting. To the extent any of the establishments or venues that people shall avoid visiting also offer reopened services permitted above, such as restaurant services, these establishments or venues can offer only the reopened services and may not offer any other services. The use of drive-thru, pickup, or delivery options for food and drinks remains allowed and highly encouraged throughout the limited duration of this executive order.

This executive order does not prohibit people from accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station; providing or obtaining other essential or reopened services; visiting swimming pools, parks, beaches, rivers, or lakes; hunting or fishing; or engaging in physical activity like jogging, bicycling, or other outdoor sports, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.

In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year, except that a student (accompanied by an adult if needed) may, as allowed by the school consistent with the minimum standard health protocols found in guidance issued by the Texas Education Agency (TEA), visit his or her school campus (a) for limited non-instructional administrative tasks such as cleaning out lockers, collecting personal belongings, and returning school items like band instruments and books; or (b) for graduating seniors, to complete post-secondary requirements that cannot be accomplished absent access to the school facility and its resources, excluding any activity or assessment which can be done virtually. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the minimum standard health protocols found in guidance issued by the TEA. Private schools and institutions of higher education should establish similar standards to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home.

Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by the TEA. Nothing in this executive order, the DSHS minimum standards, or the joint guidance issued and updated by the attorney general and governor precludes churches, congregations, and houses of worship from using school campuses for their religious services or other allowed services.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

This executive order supersedes Executive Order GA-18, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, or GA-20. This executive order shall remain in effect and in full force until 11:59 p.m. on May 19, 2020, unless it is modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 5th day of May, 2020.

Greg Abbott, Governor

TRD-202001796

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Executive Order GA-22

Relating to confinement during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, effective April 2, 2020, Executive Order GA-14 mandated certain social-distancing restrictions and other obligations for Texans that were aimed at slowing the spread of COVID-19; and

WHEREAS, on May 5, 2020, I issued Executive Order GA-21 to expand the services reopened in Texas to include cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade; and

WHEREAS, in coping with the COVID-19 disaster, and especially as services are being reopened in Texas in a safe, strategic manner, government officials should look for the least restrictive means of combatting the threat to public health; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.017(a), the "governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster."

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

Executive Order GA-21, as it pertains to cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade, is hereby amended to immediately reopen, retroactive to April 2, 2020, such salons, shops, and establishments to the extent necessary to supersede and nullify the existence of any prior or existing state or local executive order, the violation of which could form the basis for confinement in jail. To the extent any order issued by local officials in response to COVID-19 would allow confinement in jail of a person inconsistent with Executive Order GA-21 or this executive order, that order is hereby superseded retroactive to April 2, 2020.

All existing executive orders relating to COVID-19 are hereby amended to eliminate confinement in jail as an available penalty for any violation of the executive orders. No jurisdiction can confine a person in jail as a penalty for violating any executive order, or any order issued by local officials, in response to the COVID-19 disaster. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail, that order is hereby superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any order issued in response to the COVID-19 disaster. This

amendment and suspension operates retroactively to April 2, 2020, and supersedes any contrary local or state order.

This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 7th day of May, 2020.

Greg Abbott, Governor

TRD-202001806

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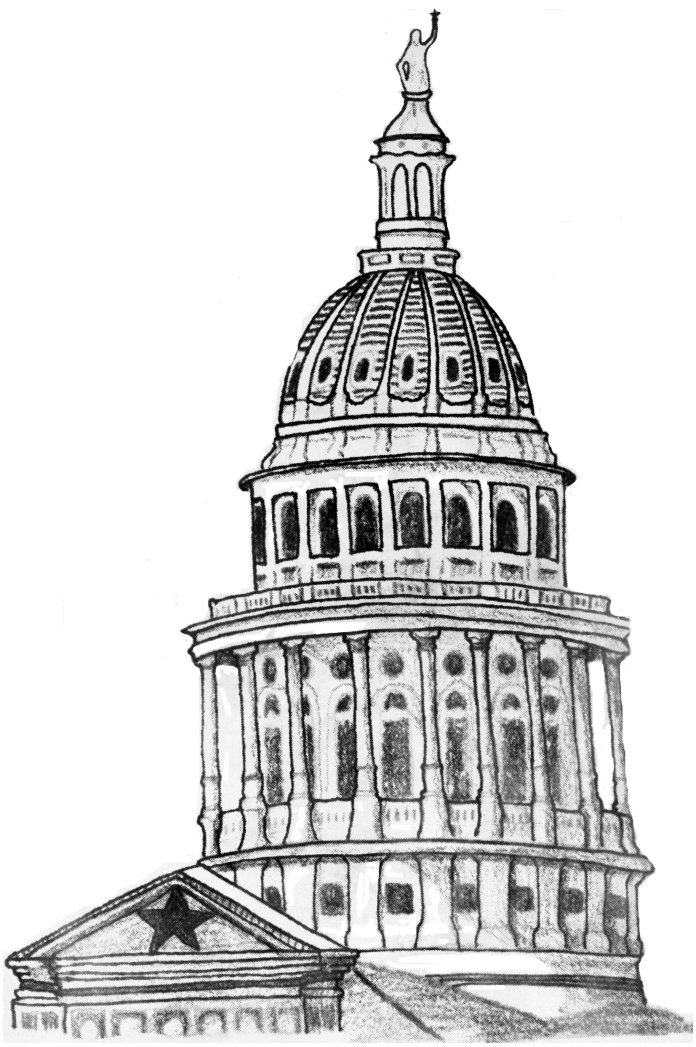

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law,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

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.15

The Texas Optometry Board adopts on an emergency basis an amendment to 22 TAC §279.15, in response to the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 19, and sets the minimum standards for safe practice during the COVID-19 disaster. This rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by failure to comply with minimum standards for safe practice during the COVID-19 pandemic.

The amendments are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under Texas Optometry Act, Texas Occupations Code, §351.151, which authorizes the adoption of procedural and substantive rules for the regulation of the optometric profession, §351.360 which sets the professional standard of care, and §351.501 which authorizes the Board to take disciplinary action. The emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

No other sections are affected by the amendments.

§279.15. Board Interpretation Number Fifteen.

(a) The Texas Optometry Act, §5.08(a), requires that no licensed optometrist or therapeutic optometrist practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, if the disease is one that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry. For purposes of interpretation, a "contagious or infectious disease" is defined as a "disease capable of being transmitted from one person to another by contact or close proximity." Infectious agents transmitted from one person to another by contact or close proximity would include bacteria and viruses. A licensee shall be deemed practicing while knowingly suffering from an infectious or contagious disease when a medical diagnosis of that disease has been made. The following include but are not limited to infectious diseases or diseases that can be transmitted:

(1) Infectious agents which may be transmitted by direct contact or by respiratory route include: chickenpox, common cold, infectious mononucleosis, influenza, mycoplasma pneumonia, measles, meningococcal disease, mumps, pertussis, rubella and tuberculosis.

(2) Diseases that could be transmitted by direct contact include: chlamydia trachomatous infections, herpes simplex viruses, staphylococcal infections, streptococcal infections, and bacterial and viral conjunctivitis.

(b) Practice during the period covered by the Governor's COVID-19 Disaster Declaration. The minimum standards for safe practice for optometrists during the COVID-19 disaster shall be compliance with the appropriate Centers for Disease Control and Prevention Guidelines and The Governor's Report to Open Texas.

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

Filed with the Office of the Secretary of State on May 1, 2020.

TRD-202001760
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: May 1, 2020
Expiration date: August 28, 2020
For further information, please call: (512) 305-8502

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TEXAS
Lone Star State

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. PRESCRIBED BURNING BOARD ENFORCEMENT PROGRAM

SUBCHAPTER A. ENFORCEMENT, INVESTIGATION, PENALTIES AND PROCEDURES

4 TAC §4.2

The Texas Department of Agriculture (the Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 4, Subchapter A, Enforcement, Investigation, Penalties and Procedures, §4.2.

The proposed amendments to §4.2 revise the Prescribed Burning Board's Schedule of Violations.

The proposed amendments are necessary to update the source law column of the Schedule of Violations and clarify abbreviations and certain provisions in the penalty matrix. No substantive changes are proposed to the amount of the penalties or the conduct that may lead to the assessment of a penalty.

Patrick Dudley, Coordinator for Agricultural Commodity Boards and Producer Relations, has determined that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government or effect to a local economy.

Mr. Dudley has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed changes to the penalty matrix will be to make it easier to read the matrix and find the source law for violations enumerated on the matrix. There will be no increased economic costs to persons required to comply with the proposed revisions in the penalty matrix, because Texas certified and insured prescribed burn managers are already subject to the rule and no substantive changes have been made to the penalty matrix. Additionally, TDA does not anticipate that there will be an adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed revisions to the penalty matrix.

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

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

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

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

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

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

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

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

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

Written comments on the proposal may be submitted to Patrick Dudley, Coordinator for Agricultural Commodity Boards and Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: *RuleComments@TexasAgriculture.gov.* Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under §153.102 of the Natural Resources Code, which provides the Department with the authority to adopt a schedule of disciplinary sanctions that the department may impose for violations of Chapter 153 of the Natural Resources Code, and Section 12.016 of the Agriculture Code, which provides that the department may adopt rules as necessary for the administration of its powers and duties under the code.

Chapter 153 of the Texas Natural Resources Code is affected by the proposal.

§4.2. Schedule of Disciplinary Sanctions.

Pursuant to §153.102(b) of the Natural Resources Code, the department has established the following schedule of disciplinary sanctions for violations of the Act, and rules adopted thereunder by the Prescribed Burning Board and/or the department.

Figure: 4 TAC §4.2

[~~Figure:~~ 4 ~~TAC~~ §4.2]

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

Filed with the Office of the Secretary of State on May 4, 2020.

TRD-202001775
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 463-7476

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

The Texas Education Agency (TEA) proposes the repeal of §61.1033, an amendment to §61.1036, and new §61.1040, concerning school facilities. The proposed rule actions would remove an obsolete rule, provide an end date for the current school facilities standards rule, and create a new rule to implement the safety standards required by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §46.008, requires the commissioner to establish standards for the adequacy of school facilities. Section 61.1033, adopted effective September 1, 1998, establishes standards for school facilities constructed before January 1, 2004. Section 61.1036, adopted effective June 9, 2003, establishes standards for facilities constructed on or after January 1, 2004.

SB 11, 86th Texas Legislature, 2019, added TEC, §7.061, which requires the commissioner to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment.

To implement SB 11, proposed new §61.1040 would establish updated school facilities standards beginning with facilities constructed on or after September 1, 2020. The standards reflect recommendations from a school facilities standards committee convened by the Texas Association of School Administrators. Except for the safety and security standards identified in the proposed new rule, the standards would not apply to open-enrollment charter schools.

Proposed new §61.1040 would address definitions; requirements for school districts with and without local building codes; minimum standards, including the requirement for school districts to have educational specifications and long-range facilities plans; safety and security standards; square footage requirements for common areas and special spaces; and methods to demonstrate compliance with the standards.

Section 61.1036 would be amended to provide an end date that corresponds with the start date of the new standards. In addition, §61.1033 would be repealed as those standards are obsolete.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation, limit an existing regulation, and create a new regulation. Section 61.1033 would be repealed as it is obsolete. The standards in §61.1036 would be limited by specifying that the standards apply to facilities constructed before September 1, 2020; currently the standards apply to all facilities built on or after January 1, 2004, with no specific end date. Proposed new §61.1040 would be added to address facilities constructed on or after September 1, 2020.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand 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: The proposal would ensure that building standards for instructional facilities and other school district and open-enrollment charter school facilities provide a secure and safe environment. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data 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 May 15, 2020, and ends June 29, 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 May 15, 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.

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1033

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.061, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment; TEC, §46.001, which provides a definition for instructional facility; TEC, §46.002, which allows the commissioner to adopt rules for administering instructional facility programs; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

§61.1033. School Facilities Standards for Construction before January 1, 2004.

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 May 4, 2020.

TRD-202001764
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1036, §61.1040

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §7.061, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment; TEC, §46.001, which provides a definition for instructional facility; TEC, §46.002, which allows the commissioner to adopt rules for administering instructional facility programs; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

§61.1036. School Facilities Standards for Construction before September 1, 2020 [~~on or after January 1, 2004~~].

(a) (No change.)

(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations approved by a school district board of trustees after January 1, 2004, and before September 1, 2020 [~~for which the construction documents have been approved by a school district board of trustees, or a board's authorized representative, on or after January 1, 2004. For projects for which a school district approved the construction documents prior to January 1, 2004, if a school district makes changes or revisions to the design of the projects on or after January 1, 2004, and before the end of construction, the changes or revisions are subject to the standards specified in §61.1033 of this title (relating to School Facilities Standards for Construction before January 1, 2004). For projects funded from bond elections passed prior to October 1, 2003, and for which a contract for construction has been awarded no later than December 31, 2005, a school district may comply with the standards specified in §61.1033(d)(2)(B)(ii) of this title in lieu of the standards specified in subsection (d)(5)(C)(iii) of this section, and with the standards specified in §61.1033(d)(2)(C)(ii) of this title in lieu of the standards specified in subsection (d)(5)(D)(ii) of this section~~].

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

§61.1040. School Facilities Standards for Construction on or after September 1, 2020.

(a) Applicability. Except for the safety and security standards identified in subsection (d)(4) of this section, this section does not apply to open-enrollment charter schools.

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

(1) Abbreviations--

(A) ANSI--American National Standards Institute;

(B) IBC--International Building Code;

(C) ICC--International Code Council;

(D) IFC--International Fire Code;

(E) IMC--International Mechanical Code;

(F) NFPA--National Fire Protection Association; and

(G) OSHA--Occupational Safety and Hazard Administration.

(2) Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.

(3) Certification or certify--An indication that an architect or engineer has reviewed the standards contained in this section and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the state of Texas in executing the construction documents.

(4) Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.

(5) Hazardous chemical--This term is defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

(6) Inclusive design--Design that considers the full range of human diversity with respect to ability, language, culture, gender, age, and other forms of human difference.

(7) Instructional space--All interior general learning spaces.

(8) Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(9) Primary entrance--The main entrance to an instructional facility that is closest to or directly connected to the reception area as well as any entrance used by visitors during school hours.

(10) Qualified building code consultant--A person who maintains, as a minimum, a current certification from the ICC.

(11) Qualified, independent third-party inspector--A person who maintains, as a minimum, a current certification from the ICC

as a combination commercial inspector and commercial energy inspector.

(12) School level--

(A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;

(C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and

(D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.

(13) Secondary entrance--Any entrance used:

(A) by students during school hours to go outside to access another building or outdoor instructional space or program; or

(B) by students, staff, or visitors outside school hours.

(14) Square feet per room--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(15) Square feet per pupil--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(c) Administration.

(1) Implementation date. The requirements for school facility standards under this section shall apply to capital improvement projects for which the budget has been publicly approved by the school district board of trustees on or after September 1, 2020. For projects where action was taken by the board of trustees prior to September 1, 2020, the school district may elect to comply with the standards specified in §61.1036 of this title (relating to School Facilities Standards for Construction before September 1, 2020). A board of trustees meets the standards under this section by either:

(A) adoption of a fiscal year maintenance and operations budget where a capital improvement project title and budget are delineated; or

(B) calling a bond election where a capital improvement project title and budget are delineated.

(2) Trigger language. If a project scope requires a school district to hire an architect or engineer per the Texas Occupations Code, the project is required to comply with the standards under this section. If additional scopes of work are added to the triggering project scope that alone would not trigger these standards, the affected areas of the additional scopes of work are not required to be brought into compliance with these standards.

(3) Compliance. Every project required to comply with the standards under this section must meet the requirements of this subsection and subsection (d) of this section and one of the two methods of compliance described in subsections (e) and (f) of this section.

(4) Designation. The school board shall designate either a qualitative or quantitative method of compliance prior to the solicitation of a licensed design professional.

(5) Educational adequacy. A facility meets the threshold of educational adequacy if the design is based on the requirements of:

(A) the minimum standards under subsection (d) of this section, including the educational specifications under subsection (d)(2) of this section and the long-range facility plan under subsection (d)(3) of this section;

(B) at least one method of compliance under subsection (e) or (f) of this section.

(6) Certification of design and construction.

(A) The architect or engineer must certify that the certification of design and construction conforms to the provisions of this section, except as indicated on the certification.

(B) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.

(C) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

(i) The school district shall provide the architect or engineer the educational specifications and long-range facility plan approved by the board of trustees as required by this section, and any district-approved design standards for the facility.

(ii) The architect or engineer shall perform a building code search under applicable regulations that may influence the project and shall certify that the design has been researched before it is final.

(iii) The architect or engineer shall certify that the facility has been designed according to the provisions of this section, based on the educational specifications, long-range facility plan, building code specifications, and all documented changes to the construction documents provided by the district. The design professional shall be required to provide certification on or within 30 calendar days of the date the construction documents are signed and sealed for bidding.

(iv) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in clause (iii) of this subparagraph. If the school district acts as general contractor, it shall make the certification required by this paragraph. The contractor or construction manager shall be required to provide certification on or within 30 calendar days of the date of providing the certificate of substantial completion.

(v) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph. The owner of the facility shall be required to provide certification on or within 30 calendar days of written approval to occupy the building by the authority having jurisdiction.

(vi) The certifications specified in clauses (i)-(v) of this subparagraph shall be gathered on the "Certification of Project Compliance" form developed by Texas Education Agency (TEA). The school district will retain this form in its files indefinitely until review and/or submittal is required by representatives of TEA.

(7) Life safety code coordination.

(A) Authority having jurisdiction. If a local authority having jurisdiction deletes an entire chapter of a locally adopted code,

the school district or design professional may choose to use that section for code compliance purposes.

(B) Districts with existing building codes.

(i) A school district located in an area that has adopted local construction codes shall comply with those codes, including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes. The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third-party inspector, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third-party architect or engineer. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(ii) For school facilities projects subject to the standards under this section, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(iii) As part of its school facilities projects and where not otherwise required by local code, a school district shall consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(iv) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third-party inspector, not employed by the design architect, engineer, or contractor, shall perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design.

(C) Districts without existing building codes.

(i) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third-party inspector, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third-party architect or engineer. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(ii) For school facilities projects subject to the standards under this section, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(iii) As part of its school facilities projects, a school district shall consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(iv) A qualified, independent third-party inspector, not employed by the design architect, engineer, or contractor, shall perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design.

(D) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. Effective September 1, 2020, the following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.

(i) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third-party inspector, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 calendar days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third-party inspector makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory

building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an independent third-party inspector for a portable, modular building constructed on or after January 1, 1986. However, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(ii) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third-party inspector, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 calendar days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third-party inspector makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third-party inspector for a portable, modular building constructed on or after January 1, 1986. However, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(iii) A school district that has purchased or leased a portable, modular building for use as a school facility on or after September 1, 2007, and before the effective date of this section, shall have the inspections required by this subsection performed within 60 calendar days of the effective date of this section. Any items of noncompliance identified during the inspections shall be brought into compliance by the school district within 90 calendar days of the date of the inspections.

(iv) Portable, modular buildings are required to comply with the minimum standards for safety and security established in subsection (d)(4) of this section.

(E) Other provisions.

(i) For school facilities projects subject to the standards in this section, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall consider the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(ii) As part of its school facilities projects, a school district shall consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. A school district may use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under Texas Health and Safety Code, Chapter 385. A school district may also use the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency.

(iii) As part of its school facilities projects, a school district shall consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(iv) School district facilities shall comply with the 2010 Americans with Disabilities Act Standards for Accessible Design as well as the Texas Accessibility Standards of 2012.

(v) School district facilities shall comply with all other local, state, and federal requirements, as applicable.

(d) Minimum standards.

(1) Requirement. All projects shall comply with the requirements of this section.

(2) Educational specifications.

(A) Written document. The educational specification must be in writing and include pertinent information regarding the school district mission, vision, goals, and pedagogy, as well as preliminary details related to facility type, grades served, and a maximum population. The educational specification shall include:

(i) the pertinent provision of the district/campus emergency operations plan relating to the constructed environment; and

(ii) a written statement that includes:

(I) the definition of inclusive design principles supported by the district; and

(II) how inclusive design principles will be addressed in new and renovated facility designs.

(B) Compliance. The requirement for an educational specification is met when a school district completes the referenced template and makes it available to the architect or engineer.

(C) Exemptions. The following projects are exempt from the application of this section:

(i) a project that consists solely of maintenance upgrades; or

(ii) a building or facility constructed, renovated, or modified on a temporary or emergency basis.

(D) Schedule. An educational specification shall be created for each campus type. Unique project types require a separate educational specification. Educational specifications shall be initiated upon the first proposed project of its type and must be completed prior to initiating the planning or programming phase of a project. Each educational specification shall be updated after five years.

(3) Long-range facility plan.

(A) Elements. A school district shall develop a long-range facility plan. The long-range facility plan may include:

(i) existing instructional programs at each campus, including, but not limited to, special education, dual language, course offerings, and partnerships;

(ii) the age and condition of all buildings and systems at each campus;

(iii) site evaluation of each campus, including, but not limited to, overall size; shape; useable land; suitability for intended use as well as planned improvements; adequate vehicular, pedestrian, and emergency access; queuing; parking; and site amenities;

(iv) the district's educational specifications; and

(v) the district's enrollment projections.

(B) Process. The process of developing the long-range facility plan shall consider the inclusion of input from teachers, students, parents, taxpayers, and other district stakeholders.

(C) Plan. The school district's long-range facility plan shall include all facilities owned or operated by the district and shall include recommendations related to sequencing of proposed improvements at each campus.

(D) Compliance. The requirement for a long-range facility plan is met when a school district completes the applicable long-range facility plan template available on the TEA website. The applicable template shall be determined based on the types, scope, and funding of the campus needs. The long-range facility plan shall be updated after five years.

(E) Exceptions. A school district is exempt from the requirements of this section:

(i) when facilities experience catastrophic damage that invokes the emergency provision of the Texas Education Code (TEC); or

(ii) in a situation deemed urgent that warrants immediate action that, left unresolved, would impair the conduct of classes.

(4) Safety and security.

(A) Compliance.

(i) Communications infrastructure. All instructional facilities are required to provide the necessary infrastructure to comply with the operational communications provisions of TEC, §37.108(a)(3), that ensure school district or charter school communications technology and infrastructure are adequate to allow for communication during an emergency.

(ii) Additional standards based on cost. The following standards apply to all projects until an instructional facility fully complies with all of the additional safety and security standards specified in subparagraph (B) of this paragraph.

(I) If a project's construction budget is $1 million to $5 million, the facility is required to comply with at least one additional safety and security standard specified in subparagraph (B) of this paragraph.

(II) If a project's construction budget is $5 million to $10 million, the facility is required to comply with at least two additional safety and security standards specified in subparagraph (B) of this paragraph.

(III) If a project's construction budget is over $10 million, the facility is required to comply with all of the additional safety and security standards specified in subparagraph (B) of this paragraph.

(iii) Exceptions to additional standards based on cost. A project at a school district or charter school instructional facility may opt out of the requirements specified in clause (ii) of this subparagraph if:

(I) the building may cease operations as an instructional facility within three years of the project; and

(II) the five-year long-range facility plan clearly states that prior to the end date of the plan the campus will be in compliance with at least two additional safety and security standards specified in subparagraph (B) of this paragraph if ceasing operation does not occur. The plan must specify which two standards will be used.

(B) Additional safety and security standards.

(i) Exterior door numbering. All instructional facilities shall be required to include graphically represented numerical characters located on both the interior and exterior of doors. The front door shall always be door 0 and is the only door or set of doors that does not require graphical numbering. Numbering sequence shall be clockwise. The architect shall coordinate this requirement with any and all accessibility requirements related to signage. Exterior numbering shall comply with the IFC §505.

(ii) Visitor management. All primary entrances to instructional facilities must provide the necessary design elements to provide for the following operations:

(I) observation of a person prior to the person's entrance to the building;

(II) prevention of immediate access to students by merely entering the building; and

(III) a visitor check-in and check-out process.

(iii) Security cameras. All instructional facilities shall be required to include a security camera at all primary and secondary entrances.

(iv) Exterior door access control. All exterior doors to instructional facilities shall be locked from the outside during school hours.

(5) Common areas.

(A) Library.

(i) A school district may consider the School Library Standards and Guidelines as adopted under TEC, §33.021, when developing, implementing, or expanding library services.

(ii) The sum total square footage of all library-related areas shall meet the following minimum square feet (SF) requirements based on maximum student capacity and may be contiguous or dispersed:

(I) for 100 students or fewer, a minimum of 1,400 SF;

(II) for 101-500 students, 1,400 SF plus an additional 4 SF for each student in excess of 100;

(III) for 501-2,000 students, a minimum of 3,000 SF plus an additional 3 SF for each student in excess of 500; and

(IV) for 2,001 or more students, a minimum of 7,500 SF plus an additional 2 SF for each student in excess of 2,000.

(iii) A school district that plans to locate more than 12 student computers in the library shall add 25 SF of space for each additional computer anticipated.

(B) Gymnasium. Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 SF at the elementary school level, 4,800 SF at the middle school level, and 7,500 SF at the high school level.

(6) Special spaces.

(A) Combination science classroom/laboratory.

(i) A combination science classroom/laboratory for Kindergarten-Grade 5 shall provide a minimum of 50 SF per student. The room shall consider a maximum of 22 students, not to exceed 25. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 linear feet (LF) of horizontal laboratory countertop support space shall be

provided for equipment and materials for investigations, activities, or student projects.

(ii) A combination science classroom/laboratory for Grades 6-8 shall provide a minimum of 58 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(iii) A combination science classroom/laboratory for Grades 9-12 shall provide a minimum of 58 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(B) Science laboratory.

(i) A science laboratory for Grades 6-8 shall be a minimum of 42 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(ii) A science laboratory for Grades 9-12 shall be a minimum of 42 SF per student. The room shall consider a maximum of 24 students, not to exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(C) Science classrooms. Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the secondary level. The science laboratories shall be located convenient to the science classrooms they serve.

(D) Fume hoods. A built-in fume hood shall be provided in each high school level chemistry or Advanced Placement (AP) chemistry laboratory or combination science classroom/laboratory. A built-in fume hood should also be provided in each high school level integrated physics and chemistry (IPC) laboratory or classroom/laboratory. The exhaust shall be vented to the outside above the roof and away from air vents. A built-in fume hood should be provided in each middle school preparation room.

(E) Preparation/storage rooms. One preparation/storage room at a minimum 10 SF per student shall be provided adjacent to each combination science classroom/laboratory. One preparation/storage room at a minimum of 10 SF per student shall be provided per science classroom and be located adjacent to its partner science laboratory.

(F) Chemical storage room. If hazardous or vaporous chemicals are to be used in a science laboratory or combination science classroom/laboratory, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students or non-authorized adults. One chemical storage room may be shared among multiple laboratories or classrooms/laboratories. Refer to NFPA, IFC, and OSHA for additional requirements.

(G) Eye/face wash. A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room serving Grades 5-12 where hazardous chemicals or eye irritants are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season shall consider a tepid water system with a heated source.

(H) Safety shower. A built-in safety shower shall be provided in each high school level chemistry or AP chemistry laboratory or classroom/laboratory and IPC laboratory or classroom/laboratory. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season shall consider a tepid water system with a heated source.

(I) Exhaust fan and ventilation system. Refer to IMC, ANSI, OSHA, and NFPA for project requirements.

(J) Emergency shut-off controls. If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students. It shall not be located at any doorway leading to a corridor or hallway.

(K) Special education. Specialized classrooms shall be a minimum of 45 SF per student.

(e) Qualitative method of compliance. To satisfy this method of compliance, the school district shall complete Criteria 1 as specified in paragraph (1) of this subsection and must satisfy either Criteria 2 as specified in paragraph (2) of this subsection or Criteria 3 as specified in paragraph (3) of this subsection.

(1) Criteria 1. The school district shall complete a process that answers all applicable questions from the Association for Learning Environments Comprehensive Planning Checklist.

(2) Criteria 2. The architect or engineer of record or the firm with which the architect or engineer is employed shall have a minimum of 10 years of experience or designed $500 million in school facilities in Texas.

(3) Criteria 3. The school district shall comply with the following requirements to demonstrate a high level of transparency during the planning and design processes.

(A) The school district must involve a minimum number of stakeholders, including at least five teachers related to the grades served and/or project type; five community members, including parents and business owners; two school board members; and five administrators.

(B) The school district must publicly disclose, from the district's internet homepage, the district educational specification, long-range facility plan, and the relevant project scoping documents.

(f) Quantitative method of compliance.

(1) Process. To satisfy this method of compliance, the project shall meet the minimum total square footage based on the

campus's flexibility level as specified in subparagraphs (A)-(D) of this paragraph and maximum student capacity of the campus as specified in paragraph (2) of this subsection. Administration spaces, support spaces, dining, library spaces, any elective program spaces, athletics spaces, fine arts spaces, staff-only spaces, storage, and circulation may not be counted as part of the total square footage of instructional space required under this method of compliance. The minimum total square footage may be divided and dispersed however the school district and design professional choose.

(A) Flexibility Level 1 (L1). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging; furniture is exclusively attached student desk/chair with an expectation of very infrequent rearrangement; minimal multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with partial access to mobile devices.

(B) Flexibility Level 2 (L2). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging, but outdoor spaces may be visible from classrooms; furniture includes detached student desk/chair with an expectation of very infrequent rearrangement; moderate multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with moderate access to mobile devices.

(C) Flexibility Level 3 (L3). Multiple student/teacher presentation spaces; organization of spaces allows for proximal outdoor access that is visible from classrooms; flexible and mobile furniture that is easily rearranged; high use of multipurpose walls, including digital touchscreen and other functionalities; learner-centric digital instruction with high levels of access to a range of mobile devices.

(D) Flexibility Level 4 (L4). Multiple student/teacher presentation spaces that are likely mobile; organization of spaces allows for direct outdoor access that is visible from classrooms; highly flexible and mobile furniture that is easily rearranged by students independently or collectively; maximized inclusion of multipurpose walls, including digital capabilities and reconfiguration; learner-centric digital instruction with high levels of access to a range of mobile devices incorporating an "anytime/anywhere" instructional philosophy.

(2) Minimum square footage by campus type and flexibility level.

(A) Elementary schools (prekindergarten-Grade 5):

(i) L1 36 SF per pupil (pp);

(ii) L2 36 SF pp;

(iii) L3 42 SF pp; and

(iv) L4 42 SF pp.

(B) Middle schools (Grades 6-8):

(i) L1 32 SF pp;

(ii) L2 32 SF pp;

(iii) L3 36 SF pp; and

(iv) L4 36 SF pp.

(C) High schools (Grades 9-12):

(i) L1 32 SF pp;

(ii) L2 32 SF pp;

(iii) L3 36 SF pp; and

(iv) L4 36 SF pp.

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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Cristina De La Fuente-Valadez
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Texas Education Agency
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CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1014, §150.1015

The Texas Education Agency (TEA) proposes new §150.1014 and §150.1015, concerning teacher appraisal. The proposed new rules would implement Texas Education Code (TEC), §21.3521, by establishing rules for teacher designation performance standards and addressing extenuating circumstances arising during the 2019-2020 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill 3, 86th Texas Legislature, 2019, added TEC, §21.3521, which establishes a local optional teacher designation system. Proposed new §150.1014 and §150.1015 would implement the new statute by specifying performance standards for teacher designations and requirements for local optional designation systems to issue designations based on data from previous school years.

Following is a description of proposed new §150.1014 and §150.1015.

§150.1014. Teacher Designation Performance Standards

Proposed new subsection (a) would establish that teacher designations would be determined by meeting teacher appraisal scores assigned using the Texas Teacher Evaluation and Support System (T-TESS) or an equivalent score on a locally developed rubric, and student achievement on expected growth targets.

Proposed new subsection (b) would specify the standards for the recognized, exemplary, and master designation levels based on the teacher observation and student growth components established in T-TESS.

Proposed new §150.1014 would complement provisions found in proposed new §150.1012, Local Optional Teacher Designation System, that has been proposed separately. These rules are being proposed separately due to time needed to calculate the standards.

§150.1015. Local Optional Teacher Designation System Extenuating Circumstances

Proposed new subsections (a) and (b) would establish the requirements and limitation for local optional teacher designation systems to issue designations based on data from previous

school years in light of extenuating circumstances arising from the COVID-19 pandemic.

Proposed new subsection (c) would establish July 31, 2021, as the expiration date of this section.

FISCAL IMPACT: Tim Regal, associate commissioner for educator support, 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 create new regulations by implementing the statutory requirements of TEC, §21.3521, regarding local optional teacher designation systems.

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Regal 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 implementation of current law by providing school districts and open-enrollment charter schools with clear performance standards and guidelines to designate teachers in a local optional teacher designation system. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data 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 May 15, 2020, and ends June 15, 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 May 15, 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 new sections are proposed under Texas Education Code (TEC), §21.3521, as added by House Bill 3, 86th Texas Legislature, 2019, which specifies that the commissioner: (1) shall establish performance standards; (2) shall ensure that local optional teacher designation systems meet the statutory requirements for the system; (3) shall prioritize high needs campuses; (4) shall enter into a memorandum of understanding with Texas Tech University regarding assessment of local iterations of the local optional teacher designation system; (5) shall periodically conduct evaluations of the effectiveness of the local optional teacher designation system; (6) may adopt fees to implement the local optional teacher designation system; and (7) may adopt rules to implement the local optional teacher designation system.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §21.3521, as added by House Bill 3, 86th Texas Legislature, 2019.

§150.1014. Teacher Designation Performance Standards.

(a) Teacher designations shall be determined by:

(1) a teacher meeting a minimum average appraisal score based on:

(A) Domains II and III of the Texas Teacher Evaluation and Support System (T-TESS), as specified in §150.1002 of this title (relating to Assessment of Teacher Performance), measured on a scale of 1-5 with minimum dimension scores of proficient, as specified in §150.1002(c)(3) of this title; or

(B) a locally developed rubric with a score equivalent to the score specified in subparagraph (A) of this paragraph, as determined by Texas Education Agency (TEA); and

(2) a minimum percentage of the teacher's students meeting or exceeding expected growth targets.

(b) Teacher designations shall be assigned in accordance with subsection (a) of this section using the following categories.

(1) Recognized. A recognized designation shall be determined by:

(A) a teacher generally meeting a minimum average score of 3.7 across Domains II and III of the T-TESS or equivalent score on a locally developed rubric as determined by TEA; and

(B) generally a minimum of 55% of the teacher's students meeting or exceeding expected growth targets.

(2) Exemplary. An exemplary designation shall be determined by:

(A) a teacher generally meeting a minimum average score of 3.9 across Domains II and III of the T-TESS or equivalent score on a locally developed rubric as determined by TEA; and

(B) generally a minimum of 60% of the teacher's students meeting or exceeding expected growth targets.

(3) Master. A master designation shall be determined by:

(A) a teacher generally meeting a minimum average score of 4.5 across Domains II and III of the T-TESS or equivalent score on a locally developed rubric as determined by TEA; and

(B) generally a minimum of 70% of the teacher's students meeting or exceeding expected growth targets.

§150.1015. Local Optional Designation System Extenuating Circumstances.

(a) General provisions.

(1) Approved local optional designation systems that have been paying teachers in the 2019-2020 school year may issue designations for the 2020-2021 school year with:

(A) the teacher observation component of §150.1012(c)(2)(A)(i) of this title (relating to Local Optional Teacher Designation System) or the student growth component of §150.1012(c)(2)(A)(ii) of this title for the 2019-2020 school year;

(B) the student growth component of §150.1012(c)(2)(A)(ii) of this title measured for mid-year growth for the 2019-2020 school year; or

(C) the teacher observation component of §150.1012(c)(A)(i) of this title and the student growth component of §150.1012(c)(A)(ii) of this title for the 2018-2019 school year and the requirements of subparagraph (A) or (B) of this paragraph.

(2) A school district that submitted a letter of intent to initially apply for a local designation system based on 2019-2020 data to the Texas Education Agency by March 23, 2020, may be issued a provisional approval of one year if its system is approved based on one of the following data options:

(A) the teacher observation component of §150.1012(c)(2)(A)(i) of this title or the student growth component of §150.1012(c)(2)(A)(ii) of this title for the 2019-2020 school year;

(B) the student growth component of §150.1012(c)(2)(A)(ii) of this title measured for mid-year growth for the 2019-2020 school year; or

(C) the teacher observation component of §150.1012(c)(2)(A)(i) of this title and the student growth component of §150.1012(c)(2)(A)(ii) of this title for the 2018-2019 school year and the requirements of subparagraph (A) or (B) of this paragraph.

(b) Limitation. A school district with provisional approval status cannot add eligible teaching assignments to its local optional designation system.

(c) Expiration. This section expires July 31, 2021.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to Board rules 22 Texas Administrative Code, Chapter 133, §133.21 regarding Application for Standard License, §133.23 regarding Applications from Former Standard License Holders, §133.25 regarding Applications from Engineering Educators, §133.27 regarding Application for Temporary License for Engineers Currently Licensed Outside the United States, §133.73 regarding Examination Results and Analysis, and §133.89, regarding Processing of Administratively Withdrawn Applications. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapters 133 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019).

As required by HB 1523, the proposed rules modify the citations in Board rules to correctly identify the specific section of Chapter 1001 of the Texas Occupations Code.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §§133.21, 133.23, 133.25, 133.27, and 133.89 by changing the citations for Texas Occupations Code §1001.3035 to §1001.272, as modified by HB 1523.

The proposed rules amend §133.73 by changing the citation for Texas Occupations Code §1001.306 to §1001.273, as modified by HB 1523.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be corrected and clarified citations in the Board rules, in compliance with HB 1523.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the changes are to citation references.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

6. The proposed rules amendments do not increase the number of individuals subject to the rule's applicability.

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pels.texas.gov.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.25, 133.27

STATUTORY AUTHORITY

The amendments are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The proposed amendments are proposed in compliance with HB 1523.

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

§133.21. Application for Standard License.

(a) - (c) (No change.)

(d) Applicants for a license shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(4) supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Record);

(5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);

(6) documentation of passage of examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable;

(7) verification of a current license, if applicable;

(8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(9) scores of TOEFL, if applicable;

(10) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(11) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 [~~§1001.3035~~] of the Act; and

(12) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, the TOEFL, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) - (i) (No change.)

§133.23. Applications from Former Standard License Holders.

(a) (No change.)

(b) A former standard license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired;

(5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record; and

(6) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 [~~§1001.3035~~] of the Act, unless previously submitted to the board.

(c) Once an application from a former standard license holder is received, the board will follow the procedures in §133.83 of this chapter (relating to Executive Director Review, Evaluation and Processing of Applications) to review and approve or deny the application.

(d) Any license issued to a former standard license holder shall be assigned a new serial number.

(e) (No change.)

§133.25. Applications from Engineering Educators.

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

(c) An engineering educator, applying under the alternate process, shall submit:

(1) an application in a format prescribed by the board;

(2) a supplementary experience record:

(A) For tenured faculty (or those approved for promotion), submit a dossier including a comprehensive resume or curriculum vitae containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(7) Information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(8) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 [~~§1001.3035~~] of the Act;

(9) documentation of passage of examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable; and

(10) written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

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

§133.27. Application for Temporary License for Engineers Currently Licensed Outside the United States.

(a) (No change.)

(b) The applicant applying for a temporary license from Australia, Canada, the Republic of Korea or the United Mexican States shall submit:

(1) an application in a format prescribed by the board;

(2) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(3) a supplementary experience record as required under §133.41(1) - (4) of this chapter (relating to Supplementary Experience

Record) or a verified curriculum vitae and continuing professional development record;

(4) at least three reference statements as required under §133.51 and §133.53 of this chapter (relating to Reference Providers and Reference Statements);

(5) passing score of TOEFL as described in §133.21(c) of this chapter (relating to Application for Standard License);

(6) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(7) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 [~~§1001.3035~~] of the Act;

(8) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges;

(9) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(10) pay the application fee established by the board; and

(11) a verification of a license in good standing from one of the jurisdictions listed in subsection (a)(3) of this section.

(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 April 27, 2020.

TRD-202001676
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 440-7723

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.73

STATUTORY AUTHORITY

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The proposed amendment is proposed in compliance with HB 1523.

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

§133.73. Examination Results and Analysis.

(a) - (c) (No change.)

(d) In accordance with §1001.273 [~~§1001.306(c)~~] of the Act, the board or NCEES will provide a written analysis furnished by the NCEES to anyone who has failed either the examination on the fundamentals of engineering or the examination on the principles and practice of engineering.

(e) - (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 April 27, 2020.

TRD-202001804
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.89

STATUTORY AUTHORITY

The amendment is proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying. The proposed amendment is proposed in compliance with HB 1523.

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

§133.89. Processing of Administratively Withdrawn Applications.

(a) To reactivate an administratively withdrawn application, the applicant must submit:

(1) a reactivation fee as established by the board;

(2) a new application form complete with signatures;

(3) updated supplementary experience records for the time period since the application was first submitted; and

(4) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 [~~§1001.3035~~] of the Act, unless previously submitted to the board.

(b) (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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Lance Kinney, Ph.D., P.E.
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Texas Board of Professional Engineers and Land Surveyors
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For further information, please call: (512) 440-7723

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.7, 137.9, 137.13

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to Board rules 22 Texas Administrative Code, Chapter 137, §137.7 regarding License Expiration and Renewal, §137.9 regarding Renewal for Expired License, and §137.13 regarding Inactive Status. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 137 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523 and Senate Bill (SB) 37, 86th Legislature, Regular Session (2019).

As required by HB 1523, the proposed rules modify the citations in Board rules to correctly identify the specific section of Chapter 1001 of the Texas Occupations Code.

As required by SB 37, the proposed rules repeal a section prohibiting the renewal of an engineer license based on the loan default proceedings of the Texas Guaranteed Student Loan Corporation which have been removed by the bill.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §137.7 by correcting an incorrect citation to Texas Occupations Code §1001.351; changing the citation for §1001.352 to §1001.275; and changing the citation for §1001.3535 to §1001.277, as modified by HB 1523.

The proposed rules amend §137.9 by repealing section (f) and renumbering the remaining subsections. This repeal is required by SB 37.

The proposed rules amend §137.13 by changing the citation for Texas Occupations Code §1001.3535 to §1001.277, as modified by HB 1523.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be corrected and clarified citations in the Board rules, in compliance with HB 1523 and SB 37.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the changes are to citations. The repeal §137.9(f), as directed by SB 37, will permit a licensee to renew their engineering license without an economic barrier due to outstanding student loans.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

6. One of the proposed rules repeals an existing regulation, as directed by SB 37.

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

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pels.texas.gov.

STATUTORY AUTHORITY

The amendments are proposed pursuant to the Texas Engineering Practice Act, Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rules or bylaws necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying, and in compliance with HB 1523 and SB 37.

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

§137.7. License Expiration and Renewal.

(a) Pursuant to §1001.351 [~~§1001.352~~] of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.

(b) Pursuant to §1001.275 [~~§1001.352~~] of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the sole responsibility to pay the required renewal fee together with any applicable late fees at the time of payment.

(c) A license holder may renew a license by submitting:

(1) the required annual renewal fee. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check), or by electronic means, payable in United States currency;

(2) the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license; and

(3) documentation of submittal of fingerprints for criminal history record check as required by §1001.277 [~~§1001.3535~~] of the Act, unless previously submitted to the board.

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

§137.9. Renewal for Expired License.

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

~~[(f) In strict accordance with the provisions of the Texas Education Code §57.491, pertaining to the loan default proceedings of the Texas Guaranteed Student Loan Corporation (TGSLC), if a license holder's name has been provided by the TGSLC as being in default of a loan, the board shall not renew the license of the license holder, unless the TGSLC certifies that the individual has entered into a repayment agreement with TGSLC, or is not in default on a loan. Such license holder may request an informal hearing, similar to that provided by §139.33 of this title (relating to Informal Proceedings), before any action concerning the denial of a renewal of a license is taken under this subsection. A defaulted loan shall not bar the board's issuance of an initial license if the applicant is otherwise qualified for licensure.]~~

(f) [~~(g)~~] In strict accordance with the provisions of the Texas Family Code, Chapter 232, pertaining to delinquent child support, if a license holder's name has been provided by the OAG (Office of the Attorney General) as being in default of child support, the board shall not renew the license of the license holder on the renewal date following such notification. The board shall not renew or reinstate said license unless the OAG certifies the individual has satisfied the requirements of the Texas Family Code, Chapter 232.

(g) [~~(h)~~] Pursuant to Texas Occupations Code Chapter 55, a license holder is exempt from any penalty imposed in this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in a timely manner because the license holder was serving as a military service member as defined in Texas Occupations Code, §55.001(4).

§137.13. Inactive Status.

(a) - (c) (No change.)

(d) To return to active status, a license holder whose license is inactive must:

(1) submit a request in writing for reinstatement to active status;

(2) pay the fee for annual renewal, as applicable;

(3) provide documentation of submittal of fingerprints for criminal history record check as required by §1001.277 [~~§1001.3535~~] of the Act, unless previously submitted to the board; and

(4) comply with the continuing education program requirements for inactive license holders returning to practice as prescribed in §137.17(o) of this chapter (relating to Continuing Education Program).

(e) - (h) (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 April 27, 2020.

TRD-202001677
Lance Kinney, Ph.D., P.E.
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 440-7723

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 281. APPLICATIONS PROCESSING

SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §281.18

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §281.18, concerning Applications Returned.

Background and Summary of the Factual Basis for the Proposed Rule

According to §281.1, concerning Purpose, it is the intent of the TCEQ to establish a general policy for the processing of applications in order to achieve the greatest efficiency and effectiveness possible. However, §281.18 requires notices of application deficiencies to be sent to the applicant via certified, return receipt mail and allows the applicant 30 days to provide a response. The proposed rulemaking would amend §281.18 to allow the use of electronic mail (email) for communicating application deficiencies and receiving responses from applicants. The proposed changes would modernize communications between TCEQ and applicants; reduce TCEQ postage costs; and improve the efficiency of application processing.

Section Discussion

§281.18, Applications Returned

The commission proposes to amend §281.18(a) to include email as a method of communicating application deficiency notices to applicants and allow the commission to establish a timeframe of less than 30 days for applicants to provide the requested information. The purpose of this change is to reduce the timeframes for obtaining necessary information and to reduce postage costs to the TCEQ. Additionally, the commission proposes to amend §281.18(a) by parsing a portion of the requirements into proposed paragraphs (1) and (2) to improve readability. Proposed §281.18(a)(1) provides the timeframe for the executive director to review additional information submitted by the applicant. Proposed §281.18(a)(2) provides the executive director's course of action if the applicant fails to submit the requested information within the established timeframe.

The commission proposes to require at least one deficiency notice to be sent via certified mail, return receipt requested providing the applicant 30 days to respond before an application may be returned.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, the agency would experience fiscal implications due to cost savings as a result of administration or enforcement of the proposed rule.

The agency estimates an annual savings of approximately $3,924 as a result of implementing this proposed rulemaking. Per the agency's records, 77% of the 750 wastewater permit applications have application deficiencies, and under the current rules, the agency sends each a certified letter at the cost of $6.80 per applicant to communicate the deficiencies. The proposed rulemaking would allow the agency to send this information electronically for a total savings of $3,924 per year for the next five years.

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 improved agency efficiency and an annual cost savings of state funds. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking 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, nor require an increase or decrease in fees paid to the agency. 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 rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the rulemaking is not to protect the environment or reduce risks to human health from environmental exposure and the proposed rule is not anticipated to have an adverse effect

in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed amendment is to reduce the timeframes for obtaining necessary information from applicants and to reduce postage costs to the TCEQ.

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

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rule would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) 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 Sections 17 or 19, Article I, Texas Constitution; or 2) 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 the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that this proposed rule would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rule would not affect any landowners' rights in private real property and there are no burdens that would be imposed on private real property by the proposed rule; the proposed rule is solely procedural and does not impact real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and would have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

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 2019-108-281-OW. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Laurie Fleet, Wastewater Permitting Section, (512) 239-5445.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.128, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission; Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §§361.011, 361.017, and 361.024, which establish the commission's jurisdiction over the regulation, management, and control of municipal solid waste, industrial solid waste, and municipal hazardous waste, and authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, Solid Waste Disposal Act, §361.018 and THSC, Texas Radiation Control Act, §§401.011, 401.051, and 401.412, which establish the commission's jurisdiction and gives the commission the authority to adopt rules necessary to carry out its responsibilities to regulate the disposal of radioactive substances and the recovery and processing of source material.

The proposed amendment implements THSC, Chapter 361.

§281.18. Applications Returned.

(a) If an application or petition is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies by electronic mail or certified mail return receipt requested prior to expiration of the applicable review period established by §281.3(a), (b) and (d) of this title (relating to Initial Review). [~~by certified mail return receipt requested. If the additional information is received within 30 days of receipt of the deficiency notice, the~~ the]

(1) The executive director will evaluate the additional information within eight working days of receipt and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative completeness in accordance with §281.17 of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness). For applications for radioactive material licenses, the executive director shall evaluate the information received in response to a notice of deficiency within thirty days.

(2) If the required information is not received from the applicant within the timeframe specified in [~~30 days of the date of receipt of~~] the deficiency notice, the executive director shall return the incomplete application to the applicant. The executive director shall send at least one deficiency notice via certified mail return receipt requested, providing the applicant 30 days to respond, before an application may be returned.

(b) For applications involving industrial, hazardous, or municipal waste, or for new, renewal, or major amendment applications for radioactive material licenses, the executive director may grant an extension of an additional 60 days beyond the original 30 days allowed under the rule for a total response time of 90 days upon sufficient

proof from the applicant that an adequate response cannot be submitted within 30 days. Unless there are extenuating circumstances, if an applicant does not submit an administratively complete application as required by this chapter, the application shall be considered withdrawn. However, if applicable, the applicant is responsible for the cost of any notice provided under §281.17 of this title and the costs of such notice shall be deducted from any filing fees submitted by the applicant prior to return of the incomplete application.

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

Filed with the Office of the Secretary of State on May 1, 2020.

TRD-202001740
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

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CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §290.39 and §290.122.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 3552, passed by the 86th Texas Legislature, 2019, authored by the Honorable J.D. Sheffield, Texas House of Representatives, amends Texas Health and Safety Code (THSC), §341.033 to require an owner, agent, manager, operator, or other person in charge of public water systems to notify their customers prior to permanently terminating the addition of fluoride to drinking water. HB 3552 took effect on September 1, 2019. This rulemaking proposes to amend §290.39 and §290.122. While HB 3552 lists owner, agent, manager, operator, or other person in charge of public water systems, the proposed amendments to §290.39 and §290.122 lists owners or operators in order to remain consistent with current TCEQ rules.

Section by Section Discussion

The commission is also correcting references and typographical errors as required by *Texas Register* formatting requirements.

§290.39, General Provisions

The commission proposes to add §290.39(j)(5) to require public water systems to notify the executive director of proposed termination of fluoridation prior to notifying customers of the water system.

§290.122, Public Notification

The commission proposes to add §290.122(j) to require public water systems to notify their customers 60 days prior to terminating the fluoridation of the drinking water. This notification would be required to be sent to customers using direct delivery methods. The water system would be required to send the executive director a copy of the public notice and Certificate of Delivery, certifying that the public notice was sent to customers.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government as a result of administration or enforcement of the proposed rules. No significant fiscal implications are anticipated for units of local government.

This rulemaking addresses necessary changes in order to implement HB 3552 which requires public water systems to notify customers prior to permanently terminating the addition of fluoride to drinking water. If a public water system decides to terminate the addition of fluoride to drinking water, then they would have a one-time minimal cost of mailing a notice, as required by law.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be improved access to information regarding the fluoridation of drinking water and compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed 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 Communities Impact Assessment

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 rules would be in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules would be 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 would not adversely affect a small or micro-business in a material way for the first five years the proposed rules 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, nor require an increase or decrease in fees paid to the agency. 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 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. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking is to implement HB 3552 by requiring notification to the executive director and the customers of a public water system prior to a permanent termination of the addition of fluoride to drinking water. Additionally, it is not a rulemaking 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. It is not anticipated that the cost of complying with the proposed rules would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Additionally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of water supply systems; 2) does not exceed any express requirements of THSC, Chapter 341 relating to the minimum standards of sanitation and health protection measures; 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.

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

Takings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to implement HB 3552 relating to certain notice requirements regarding fluoridation of a water supply system. The proposed rules would advance this stated purpose by making the commission's rules consistent with HB 3552. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply because this action does not affect private real property.

Promulgation and enforcement of these rules would constitute neither a statutory nor a constitutional taking of private real property. These rules would not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking would not burden nor restrict the owner's right to property. These provisions would not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would 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.

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 2020-007-290-OW. The comment period closes on June 16, 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 Patrick Kading, Drinking Water Special Functions Section, (512) 239-4670.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §290.39

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 establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code (THSC), §341.0315, which requires public drinking water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendment implements House Bill 3552 passed by the 86th Texas Legislature, 2019.

§290.39. General Provisions.

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality; or within 1/2-mile of the corporate boundaries of a district, or other political subdivision providing the same service; or within 1/2-mile of a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) written application for service was made to that provider; and

(B) all application requirements of the service provider were satisfied, including the payment of related fees.

(2) A person may submit a request for an exception to the requirements of paragraph (1) of this subsection if the application fees will create a hardship on the person. The request must be accompanied by evidence documenting the financial hardship.

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(4) Emergency Preparedness Plan for Public Water Systems that are Affected Utilities.

(A) Each public water system that is also an affected utility, as defined by §290.38 of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix G of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.

(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed ac-

cording to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. For an example, see commission Form 20698.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(6) For public water systems using reverse osmosis or nanofiltration membranes, the engineering report must include the requirements specified in paragraph (1)(A) - (H) of this subsection, and additionally must provide sufficient information to ensure effective treatment. Specifically:

(A) Provide a clear identification of the proposed raw water source.

(i) If the well has been constructed, a copy of the State of Texas Well Report according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), a cementing certificate (as required by §290.41(c)(3)(A) of this title), and a copy of the complete physical and chemical analysis of the raw water from the well as required by §290.41(c)(3)(G) of this title; or

(ii) If the well has not been constructed, the approximate longitude and latitude for the new well and the projected water quality.

(B) Provide a description of the pretreatment process that includes:

(i) target water quality of the proposed pretreatment process;

(ii) constituent(s) to be removed or treated;

(iii) method(s) or technologies used; and

(iv) operating parameters, such as chemical dosages, filter loading rates, and empty bed contact times.

(C) The design of a reverse osmosis or nanofiltration membrane system shall be based on the standard modeling tools of the manufacturer. The model must be run for both new membranes and end-of-life membranes. All design parameters required by the membrane manufacturer's modeling tool must be included in the modeled analysis. At a minimum, the model shall provide:

(i) system flow rate;

(ii) system recovery;

(iii) number of stages;

(iv) number of passes;

(v) feed pressure;

(vi) system configuration with the number of vessels per stage, the number of passes (if applicable), and the number of elements per vessel;

(vii) flux (in gallons per square foot per day) for the overall system;

(viii) selected fouling factor for new and end-of-life membranes; and

(ix) ion concentrations in the feed water for all constituents required by the manufacturer's model and the projected ion concentrations for the permeate water and concentrate water.

(D) In lieu of the modeling requirements as detailed in subparagraph (C) of this paragraph, the licensed professional engineer may provide either a pilot study or similar full-scale data in accordance with §290.42(g) of this title (relating to Water Treatment). Alterna-

tively, for reverse osmosis or nanofiltration units rated for flow rates less than 300 gallons per minute, the design specifications can be based on the allowable operating parameters of the manufacturer.

(E) Provide documentation that the components and chemicals for the proposed treatment process conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Provide the details for post-treatment and re-mineralization to reduce the corrosion potential of the finished water. If carbon dioxide and/or hydrogen sulfide is present in the reverse osmosis permeate, include the details for a degasifier for post-treatment.

(G) For compliance with applicable drinking water quality requirements in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), provide the projected water quality at the entry point to the distribution system and the method(s) used to make the water quality projections.

(H) When blending is proposed, provide the blending ratio, source of the water to be blended, and the calculations showing the concentrations of regulated constituents in the finished water.

(I) Provide a description of the disinfection byproduct formation potential based on total organic carbon and other precursor sample results.

(J) Provide the process control details to ensure the integrity of the membrane system. The engineering report shall identify specific parameters and set points that indicate when membrane cleaning, replacement, and/or inspection is necessary.

(i) The parameters shall be based on one, or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(ii) Define the allowable change from baseline performance.

(7) Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:

(A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, and salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online.

(B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s).

(C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report.

(D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance. Refer to paragraph (6)(C) of this subsection and §290.45(a)(6) of this title for specific considerations.

(E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) of this title for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses.

(8) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC, §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision;

(4) is a Class A utility, as defined by TWC, §13.002, that has applied for or been granted an amendment of a certificate of convenience and necessity under TWC, §13.258, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity, non-transient [~~nontransient~~] water system and the person has demonstrated financial assurance under THSC, Chapter 361 or Chapter 382 or TWC, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in previously approved plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

(1) Public water systems shall submit plans and specifications to the executive director for the following significant changes:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the number of connections, results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title, or involves interconnection with another public water system; and

(E) any other material changes specified by the executive director.

(2) Public water systems shall notify the executive director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water. These are considered to be significant changes that require written approval from the executive director.

(A) Examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(B) After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the water system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(3) Plans and specifications may not be required for changes that are specifically addressed in paragraph (1)(D) of this subsection in the following situations:

(A) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;

(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(B) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (A) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (A) of this paragraph.

(4) Public water systems shall notify the executive director in writing of proposed replacement or change of membrane modules, which may be a significant change. After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section. In its notification to the executive director, the system shall include the following information:

(A) The membrane module make/type, model, and manufacturer;

(B) The membrane plant's water source (groundwater, surface water, groundwater under the direct influence of surface water, or other);

(C) Whether the membrane modules are used for pathogen treatment or not;

(D) Total number of membrane modules per membrane unit; and

(E) The number of membrane modules being replaced or changed for each membrane unit.

(5) Public water systems that furnish for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of water unless it provides both written notice to the executive director 60 days before the termination and written notice to customers as required by §290.122(j) of this title (relating to Public Notification).

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site-specific requirements for systems that have been granted an exception. The requirements may include, but are not limited to: site-specific design, operation, maintenance, and reporting requirements.

(5) Water systems that are granted an exception shall comply with the requirements established by the executive director under paragraph (4) of this subsection.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.

(o) Emergency Preparedness Plans for Affected Utilities.

(1) Each public water system that is also an affected utility and that exists as of November 1, 2011 is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and using the template in Appendix G of §290.47 of this title or another emergency preparedness plan that meets the requirements of this subchapter no later than February 1, 2012. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(4) Not later than June 1, 2012, each affected utility shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

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. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEM

30 TAC §290.122

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 establishes the commission's general authority to perform any act necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which establish the commission's authority to adopt any rules necessary to carry out its powers and duties; and Texas Health and Safety Code (THSC), §341.0315, which requires public drinking water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendment implements House Bill 3552 passed by the 86th Texas Legislature, 2019.

§290.122. Public Notification.

(a) Tier 1 public notification requirements for acute violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure which require a Tier 1 public notice as described in this subsection. The owner or operator of a public water system must notify persons served by their system of any maximum contaminant level (MCL), maximum residual disinfectant level (MRDL), treatment technique violation, or other situation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Situations that pose an acute threat to public health include:

(A) a violation of the *Escherichia coli (E. coli)* MCL as described in §290.109(g)(1)(A) - (D) of this title (relating to Microbial Contaminants);

(B) an acute turbidity issue at a treatment plant that is treating surface water or groundwater under the direct influence of surface water, specifically:

(i) a combined filter effluent turbidity level above 5.0 nephelometric turbidity units (NTU);

(ii) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters;

(iii) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the system;

(iv) failure of a system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent reading of 1.0 NTU;

(v) failure of a system to meet turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(3) of this title (relating to Surface Water Treatment); or

(vi) failure of a system to meet treatment, turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(4) of this title;

(C) a violation of the MCL for nitrate or nitrite as defined in §290.106(f)(2) of this title (relating to Inorganic Contaminants);

(D) a violation of the acute MRDL for chlorine dioxide as defined in §290.110(f)(5)(A) or (B) of this title (relating to Disinfectant Residuals);

(E) occurrence of a waterborne disease outbreak;

(F) Detection of *E. coli* or other fecal indicators in source water samples as specified in §290.109(h)(2) of this title, which requires a public notice to be issued within 24 hours of notification of the positive sample;

(G) other situations that have the potential to have serious adverse effects on health as a result of short-term exposure; and

(H) at the discretion of the executive director, other situations may require a Tier 1 public notice based on a threat to public health.

(2) The initial Tier 1 acute public notice and/or boil water notice required by this subsection shall be issued as soon as possible, but in no case later than 24 hours after the violation or situation is identified. The initial public notice for an acute violation or situation shall be issued in one or more of the following manners that are reasonably calculated to reach persons served by the public water system within the required time period.

(A) The owner or operator of a public water system with an acute microbiological or turbidity violation as described in paragraph (1)(A) or (B) of this subsection shall include a boil water notice issued in accordance with the requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems). Public water systems are not required to issue a boil water notice under the conditions as referenced in paragraph (1)(B)(vi) of this subsection, unless required at the discretion of the executive director in accordance with §290.46(q)(5) of this title.

(B) The owner or operator of a community water system shall furnish a copy of the notice to the radio and television stations serving the area served by the public water system.

(C) The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area is not served by a daily newspaper of general circulation, notice shall instead be issued by direct delivery or by continuous posting in conspicuous places within the area served by the system. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(D) The owner or operator of a noncommunity water system shall issue the notice by direct delivery or by continuously posting the notice in conspicuous places within the area served by the water system. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(E) If notice is provided by posting, the posting must remain in place for as long as the violation or situation exists or seven days, whichever is longer.

(3) The owner or operator of a water system required to issue an initial notice for an acute MCL or treatment technique violation shall issue additional notices. The additional public notices for acute violations shall be issued in the following manner.

(A) Not later than 45 days after the violation, the owner or operator of a community water system shall notify persons served by the system using mail (by direct mail or with the water bill) or hand delivery. The executive director may waive mail or hand delivery if it is determined that the violation was corrected within the 45-day period. The executive director must make the waiver in writing and within the 45-day period.

(B) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists.

(C) If the owner or operator of a noncommunity water system issued the initial notice by continuous posting, posting must continue for as long as the violation exists and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) Copies of all notifications required under this subsection must be submitted to the executive director within ten days of its distribution.

(b) Tier 2 public notification requirements for other MCL, MRDL, or treatment technique violations and for variance and exemption violations which are violations and situations with potential to have serious adverse effects on human health, as defined in this subsection. The owner or operator of a public water system must notify persons served by their system of any MCL, MRDL, or treatment technique violation other than those described in subsection (a)(1) of this section and of any violation involving a variance or exemption requirement. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification under this subsection include:

(A) any violation of an MCL, MRDL, or treatment technique not listed under subsection (a) of this section;

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability);

(C) failure for a groundwater system to take corrective action, including uncorrected significant deficiencies, or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the executive director) before or at the first customer under §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(D) failure to perform any three months of raw surface water monitoring as required by §290.111(b) of this title or request bin classification from the executive director under §290.111(c)(3)(A) of this title;

(E) other violations or situations deemed by the executive director to have significant potential to have serious adverse effects on human health as a result of short-term exposure may require a Tier 1 public notice as described in subsection (a)(2) of this section; or

(F) failure of a public water system to conduct Level 1 assessment(s) or Level 2 assessment(s) or failure to complete corrective/expedited action(s) as required by §290.109 of this title or failure of a system to conduct seasonal start-up procedures as required by §290.109 of this title.

(2) The initial Tier 2 public notice for any violation, situation, or significant deficiency identified in this subsection must be issued as soon as possible, but in no case later than 30 days after the violation is identified. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by:

(i) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i) of this subparagraph. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.) Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide drinking water to others (e.g., apartment building owners or large private employers); continuous posting in conspicuous public places within the area served by the system or on the Internet; electronic de-

livery or alert systems (e.g., reverse 911); or delivery to community organizations.

(B) The owner or operator of a noncommunity water system shall issue the notice by:

(i) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of e-mail to notify employees or students; electronic delivery or alert systems (e.g., reverse 911); or, delivery of multiple copies in central locations (e.g., community centers).

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by direct delivery, for as long as the violation exists.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(c) Tier 3 public notification requirements for other violations, situations, variances, exemptions as defined in this subsection. The owner or operator of a public water system who fails to perform monitoring required by this chapter, fails to comply with a testing procedure established by this chapter, or is subject to a variance or exemption granted under §290.102(b) of this title shall notify persons served by the system. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations or other situations that require notification as described in this subsection include:

(A) exceedance of the secondary constituent levels (SCL) for fluoride;

(B) failure to perform monitoring or reporting required by this subchapter;

(C) failure to comply with the analytical requirements or testing procedures required by this subchapter;

(D) operating under a variance or exemption granted under §290.102(b) of this title;

(E) failure to maintain records on recycle practices as required by §290.46(f)(3)(C)(iii) of this title;

(F) a community and nontransient, noncommunity public water system shall notify its customers of the availability of unregulated contaminant monitoring results, as required under 40 Code of Federal Regulations (CFR) §141.207;

(G) failure of a community and nontransient, noncommunity water public water system to notify of the availability of unregulated contaminant monitoring results, as required under 40 CFR §141.207;

(H) failure of a public water system to maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of those assessments, or documentation of corrective actions required but not yet complete, or other available summary documentation of the sanitary defects and corrective actions taken under §290.109 of this title;

(I) failure of a public water system to maintain a record of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title;

(J) other violations or situations deemed by the executive director to pose an acute risk to human health or with significant potential to have serious adverse effects on human health as a result of short-term exposure may require a Tier 1 public notice as described in subsection (a)(2) of this section;

(K) other violations or situations at the, discretion of the executive director, may require a Tier 2 public notice as described in subsection (b)(2) of this section; and

(L) failure to maintain records for seasonal start-up procedures and seasonal start-up procedures certification form(s) as required by §290.109 of this title.

(2) The initial Tier 3 public notice issued pursuant to this section shall be issued no later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system shall repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice shall remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days even if the violation or situation is resolved. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by mail or other direct delivery to each customer receiving a bill and to other service connections. The owner or operator of a noncommunity water system shall issue the notice by either posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(B) The owner or operator of any public water system shall also notify the public using another method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (A) of this paragraph. Such persons may include people who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). These other methods may include publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(C) For community public water systems, the Consumer Confidence Report (CCR) as required under Subchapter H of this chapter (relating to Consumer Confidence Reports) may be used for delivering the initial Tier 3 public notice and all required repeat notices, under the following conditions.

(i) The CCR is provided to persons served no later than 12 months after the public water system learns of the violation or situation as described under paragraph (1) of this subsection.

(ii) The Tier 3 notice contained in the CCR follows the content requirements under §290.272 of this title (relating to Content of the Report).

(iii) The CCR is distributed following the delivery requirements under §290.274 of this title (relating to Report Delivery and Recordkeeping).

(D) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue repeat notices at least once every 12 months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists or variance or exemption remains in effect. Repeat public notice may be included as part of the CCR as described in paragraph (2) of this subsection.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every 12 months for as long as the violation exists.

(d) Each public notice must conform to the following general requirements.

(1) The notice must contain a clear and readily understandable explanation of the violation, significant deficiency, or situation that led to the notification. The notice must not contain very small print, unduly technical language, formatting, or other items that frustrate or defeat the purpose of the notice.

(2) If the notice is required for a specific event or significant deficiency, it must state when the event occurred or the date the significant deficiency was identified by the executive director.

(3) For notices required under subsections (a), (b), or (c)(1)(A) of this section, the notice must describe potential adverse health effects.

(A) For MCL, MRDL, or treatment technique violations or situations (including uncorrected significant deficiencies), the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR Part 141, Subpart Q, Appendix B, in addition to any language required by the executive director. For violations of the condition of a variance or exemption, the notice must contain the health effects information and include the items and schedule milestones of the variance or exemption.

(B) For fluoride SCL violations, the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR §141.208, in addition to any language required by the executive director.

(C) For failure to perform any three months of raw surface water monitoring or request bin classification from the executive director, the notice must contain the mandatory federal contaminant specific language contained in 40 CFR §141.211(d)(1) and (2), respectively, in addition to any language required by the executive director.

(D) The notice must describe the population at risk, especially subpopulations particularly vulnerable if exposed to the given contaminant.

(4) The notice must state what actions the water system is taking to correct the violation or situation, and when the water system expects to return to compliance. For groundwater systems with significant deficiencies, the notice must contain the executive director-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed.

(5) The notice must state whether alternative drinking water sources should be used, and what other actions consumers should take, including when they should seek medical help, if known.

(6) Each notice must contain the name, business address and telephone number at which consumers may contact the owner, operator, or designee of the public water system for additional information concerning the notice.

(7) Where appropriate, the notice must be multilingual. The multilingual notice must explain the importance of the notice or provide a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(8) The notice shall include a statement to encourage the notice recipient to distribute the public notice to the other persons served. Public water systems must include in their notice the following language: Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

(9) Systems with variances or exemptions must notify in accordance with 40 CFR §141.205(b).

(10) Systems must notify customers at sampled taps of the results of any required lead or copper analyses and certify completion of the notification to the executive director.

(e) Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins. The owner or operator of a noncommunity water system must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

(f) Proof of public notification. A copy of any public notice required under this section must be submitted to the executive director within ten days of its distribution as proof of public notification. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or other method of submission as specified by the executive director. Each proof of public notification must be accompanied with a signed Certificate of Delivery.

(g) Notice to consecutive systems. All public water systems shall provide public notice to persons served by the public water system in accordance with this section. All public water systems that are required to issue public notice to persons in accordance with this section, and that sell or otherwise provide drinking water to other public water systems (i.e., consecutive systems), shall provide public notice to the owner or operator of the consecutive system. The consecutive system is responsible for and shall provide public notice to the persons it serves in accordance with this section.

(h) Notices given by the executive director. The executive director may give the notice required by this section on behalf of the owner and operator of the public water system following the requirements of this section. The owner or operator of the public water system remains responsible for ensuring that the requirements of this section are met.

(i) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the executive director may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the executive director for limiting distribution of the notice must be granted in writing.

(j) The owner or operator of a public water system that furnishes for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of drinking water unless the owner or operator provides written notice to persons served by the public water system and to the executive director of the termination of fluoridation at least 60 days before the termination. The public notice to persons served by the public water system pursuant to this section shall be issued using the delivery methods described in subsection (c)(2)(A) of this section. Proof of public notification issued pursuant to this subsection shall be submitted in accordance with subsection (f) of this section.

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

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Texas Commission on Environmental Quality
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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§293.3, 293.11, 293.14, 293.15, 293.44, 293.81, 293.94, 293.201, and 293.202; new §293.90 and §§293.132 - 293.137; and the repeal of §§293.132 - 293.136.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is proposed to implement Senate Bill (SB) 1234 from the 82nd Texas Legislature, 2011; SB 1987 and SB 2014 from the 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911 from the 86th Texas Legislature, 2019.

SB 1234 repealed Texas Government Code, §375.021, which allowed creation of a municipal management district (MMD) outside of a municipality.

SB 1987 amended Texas Local Government Code, §375.022(b), the petition requirements for creations of MMDs. SB 2014 amended Texas Water Code (TWC), §49.181, to revise language relating to creation and organization expenses and change orders; and to add language regarding the issuance of bonds to finance the cost of spreading and compacting fill to remove property from the 100-year floodplain or provide drainage made by a levee improvement district (LID) or a municipal utility district (MUD), respectively, if certain requirements are met.

HB 304 amended Texas Local Government Code, §375.022(b), to include language to place further qualifications on the petitioner of a creation application. HB 440 created Texas Government Code, Chapter 1253, to update requirements for general obligation bonds and the use of unspent bond proceeds. HB 2590 amended TWC, §54.030 and §54.032(a) relating to notice and proof of hearing. HB 2590 also amended TWC, §54.030 to remove the requirement for a commission hearing for the conversion of certain districts to districts operating under the powers of a MUD. Furthermore, HB 2590 amended TWC, §54.234(a) to update language regarding cost analyses for road projects. HB 2914 added TWC, §49.3225 and amended TWC, §54.030(b) to allow the commission to convert a water district to a MUD and to dissolve a district without having a public hearing. SB 239 amended TWC, §49.062 relating to the process for designation of an alternative meeting place. Senate Bill 911 amended TWC, §12.081(a) to add language regarding issuance of a permit under Texas Health and Safety Code (THSC), Chapter 361. SB 911 also amended TWC, §49.102(e) and (f) to add language regarding a temporal component and submittal updates and amended TWC, §49.196(a) to add language regarding on-site audit function.

Section by Section Discussion

The commission proposes non-substantive changes, such as grammatical corrections or to clarify language. These changes are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

§293.3, Continuing Right of Supervision of Districts and Authorities Created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution

The commission proposes to amend §293.3(a)(1) to reflect the changes made to TWC, §12.081 by SB 911. The commission also proposes §293.3(a)(6) to incorporate the change to TWC, §12.081, which confirmed that the commission may issue a permit under THSC, Chapter 361, regardless of a district's rule or objection. The subsequent paragraph would be renumbered accordingly. These amendments implement SB 911.

§293.11, Information Required to Accompany Applications for Creation of Districts

The commission proposes to amend §293.11(d)(1) to remove the option for petition by 50 persons if more than 50 people own property in the proposed district to reflect that this option was removed from TWC, Chapter 54 by SB 1987 and SB 2014. The commission also proposes to amend §293.11(d)(9) to update the requirements for temporary directors in accordance with TWC, §54.022. The commission proposes to amend §293.11(j)(1) to clarify that the petitioners for creation of an MMD must be owners of property that would be subject to assessment by the district.

The commission also proposes to amend §293.11(j)(1) to remove the option for petition by 50 persons if more than 50 people own property in the proposed district. The commission proposes to amend §293.11(j)(1)(F) to remove the language that implies that the commission can create MMDs outside of a municipality to reflect changes made to Texas Local Government Code, Chapter 375 which removed the authority of the commission to create a MMD outside of a city. These amendments implement SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304 (86th Texas Legislature).

§293.14, District Reporting Actions Following Creation

The commission proposes to amend §293.14(a) to add a requirement that a district must submit a certified copy of an order canvassing results of a confirmation election no later than the 30th day after the date of the election in accordance with TWC, §49.102(e) and (f). This amendment implements SB 911.

§293.15, Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts

The commission proposes to amend §293.15 to incorporate the revised process for a district conversion in TWC, §§54.030, 54.032, and 54.033. This amendment implements HB 2590 and HB 2914.

§293.44, Special Considerations

The commission proposes §293.44(a)(16)(B) and amends existing §293.44(a)(16)(B) and (D) to differentiate types of expenses incurred by districts. The subparagraphs would be re-lettered accordingly to account for proposed §293.44(a)(16)(B). The commission also proposes §293.44(a)(25) and (26) to allow districts to finance the cost of spreading and compacting fill to remove property from the 100-year flood plain or to provide drainage if the costs are less than constructing or improving drainage facilities. Additionally, the commission proposes §293.44(b)(8) and (9) to limit the issuance of general obligation bonds by districts and to outline how any unspent proceeds may be used. The commission also proposes §293.44(b)(10) to add language regarding the issuance of bonds to use a certain return flow of wastewater. This amendment implements SB 2014 (85th Texas Legislature) and HB 440 (86th Texas Legislature).

§293.81, Change Orders

The commission proposes to amend §293.81 to reflect the changes made to TWC, §49.273(i) by SB 2014. The commission proposes to amend §293.81(1) to better reflect existing statute and to clarify change orders must benefit the district. The commission also proposes §293.81(1)(C) to remove competitive bidding requirements to change orders. These amendments implement SB 2014.

§293.90, Change in Designated Meeting Location

The commission proposes new §293.90 to outline procedures for changing a designated meeting place of a district. Proposed new §293.90 implements SB 239.

§293.94, Annual Financial Reporting Requirements

The commission proposes to amend §293.94(i)(1) and (3) to allow the executive director to review, investigate, conduct on-site audits, and request additional information, and requires a district to submit additional information within 60 days after a request by the executive director. This amendment implements SB 911.

§293.132, Notice of Hearing

The commission proposes the repeal of §293.132 and moves the language to new §293.133.

§293.133, Investigation by the Staff of the Commission

The commission proposes the repeal of §293.133 and moves the language to new §293.134.

§293.134, Order of Dissolution

The commission proposes the repeal of §293.134 and moves the language to new §293.135.

§293.135, Certified Copy of Order to be Filed in the Deed Records

The commission proposes the repeal of §293.135 and moves the language to new §293.136.

§293.136, Filing Fee

The commission proposes the repeal of §293.136 and moves the language to new §293.137.

§293.132, Applications for Order without Hearing

The commission proposes new §293.132 to allow the commission to adopt an order without conducting a hearing if it meets the requirements of TWC, §49.324, and to allow dissolution of districts without a hearing if they meet certain requirements outlined in new §293.132. Proposed new §293.132 implements HB 2914.

§293.133, Notice of Hearing

The commission proposes new §293.133. The language in existing §293.132 is moved to this new section with a change to exclude dissolutions that meet the provisions of §293.132. This change implements HB 2914.

§293.134, Investigation by the Staff of the Commission

The commission proposes new §293.134. The language in existing §293.133 is moved to this new section.

§293.135, Order of Dissolution

The commission proposes new §293.135. The language in existing §293.134 is moved to this new section with a change to include the executive director's authority over an order of dissolution. This amendment implements HB 2914.

§293.136, Certified Copy of Order to be Filed in the Deed Records

The commission proposes new §293.136. The language in existing §293.135 is moved to this new section.

§293.137, Filing Fee

The commission proposes new §293.137. The language in existing §293.136 is moved to this new section.

§293.201, *Acquisition of Road Powers by a Municipal Utility District*

The commission proposes to amend §293.201(a) to remove the criteria that a road must meet to allow a MUD to acquire road powers.

§293.202, Application Requirements for Commission Approval

The commission proposes to amend §293.202(a)(8) to clarify the language regarding cost analysis for proposed road facilities. This amendment implements HB 2590.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state government as a result of administration or enforcement of the proposed rules. This proposed rulemaking is necessary to bring Chapter 293 in compliance with changes to state law.

Amended §293.44 contains the updates required by SB 2014. This state law allows districts to finance the cost of spreading and compacting fill to provide drainage if the costs are less than constructing or improving drainage facilities. This option may provide a cost savings for units of local government, but its impact cannot be estimated by the agency.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved readability and compliance with state law.

Amended §293.90, implements SB 239 which allows electors within certain special districts to petition the commission to change the location of a meeting place if the district's board fails to designate one. This could be considered a public benefit.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Community Impact Statement

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

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking updates existing regulations in order to comply with state law. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the 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 Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, 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 meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by: SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911 (86th Texas Legislature).

These bills require the following changes:

SB 1234 - amends requirements for resolutions of a municipality in support of MMD creations;

SB 1987 - amends the petition requirements for creations of MMDs;

SB 2014 - makes revisions relating to creation and organization expenses and change orders for water districts, as well as adds language regarding LID and MUD bond issuances for spreading and compacting fill to provide drainage;

HB 304 - implements further qualifications on the petitioner of an MMD creation application;

HB 440 - updates requirements for general obligation bonds and the use of unspent bond proceeds for water districts;

HB 2590 - amends notice and proof of hearing language for water districts; and repeals the requirement for a hearing for the conversion of certain districts to districts that operate under the powers of a MUD;

HB 2914 - allows the commission to convert a water district to a MUD without having a public hearing, and allows the commission to dissolve a district without having a public hearing;

SB 239 - adds a new section relating to the process for designating an alternative meeting place for district board meetings; and

SB 911 - adds new language regarding issuance of a permit under THSC, Chapter 361, adds a temporal component and submittal updates in accordance with TWC, Chapter 49, and adds new language regarding on-site audits of districts.

The proposed rulemaking would substantially advance this purpose by amending Chapter 293 rules to incorporate the new statutory requirements.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sec-

tor of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rules is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing the areas of contracts, projects, and authority with respect to water districts. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking is pursuant to the commission's specific authority in the TWC, §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not proposed solely under the commission's general powers.

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

Takings Impact Assessment

The commission evaluated the proposed rules and performed an analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by SB 1234 (82nd Texas Legislature); SB 1987 and SB 2014 (85th Texas Legislature); and HB 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911 (86th Texas Legislature).

These bills require the following changes:

SB 1234 repealed Local Government Code, §375.021; thus, MMD creation language that reflected such districts can be created outside of a municipality was removed from §293.11(j)(1)(F).

SB 1987 removed the requirement in TWC, §54.014 that petitions for creations of MMDs have to be signed by 50 landowners in the proposed district.

SB 2014 added TWC, §49.181(i) to differentiate types of expenses incurred by districts. SB 2014 added TWC, §49.181(k) to allow districts to finance the cost of spreading and compacting fill to provide drainage in certain situations. SB 2014 also amended TWC, §49.273(i) to clarify that change orders must benefit the district, and removed competitive bidding requirements to change orders.

HB 304 amended Local Government Code, §375.022(b) to require additional information in petitions for creations of MMDs.

HB 440 added Texas Government Code, Chapter 1253 which prohibits political subdivisions from issuing general obligation bonds to purchase or improve property in certain instances where the maturity of the bonds exceeds the economic life of the improvements or property. HB 440 also allows a district to use the unspent proceeds of general obligation bonds for various purposes as identified in HB 440 if certain criteria is met.

HB 2590 amended TWC, Chapter 54 by replacing the requirement that the district request, and the commission holds a hearing for a conversion with the requirement that the district request, and the commission issues an order for conversions.

HB 2914 added TWC, §49.3225 which allows dissolution of districts without a hearing if certain requirements are met. HB 2914 also amended TWC, §54.030(b) by allowing the commission to convert water districts to a MUD without a hearing.

SB 239 amended TWC, §49.062(b) and (c) and added §49.062(c-1) and (e) - (g) to reflect the process for designation of an alternative meeting place.

SB 911 amended TWC, §49.102(e) and (f) to require a district to submit a certified copy of an order canvassing results of a confirmation election no later than the 30th day after the date of the election. SB 911 amended TWC, §49.195(a) to allow the executive director to request additional information from the district after reviewing the audit report, and amended TWC, §49.196(a) to allow the executive director to conduct on-site audits of districts. SB 911 also amended TWC, §12.081(a) by adding language regarding issuance of a permit under THSC, Chapter 361.

The proposed rulemaking would substantially advance this purpose by amending Chapter 293 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. This proposed rulemaking will primarily affect districts, especially in the areas of creations/conversions, projects, and authority; this would not be an effect on private real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will 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.

Submittal of Comments

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 2020-008-293-OW. The comment period closes on June 16, 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 Jaime Ealey, Districts Section, (512) 239-4739.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.3

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.3, which relates to the commission's continuing right of supervision of districts.

The proposed amendment implements the language set forth in Senate Bill 911 from the 86th Texas Legislature, 2019, which updated the scope of an inquiry into the officers and directors of any district or authority and added new language regarding issuance of a permit under Texas Health and Safety Code, Chapter 361.

§293.3. Continuing Right of Supervision of Districts and Authorities Created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution.

(a) The powers and duties of all districts and authorities created under the Texas Constitution, Article III, §52, and Article XVI, §59, are subject to the continuing right of supervision of the state [~~State~~] of Texas, by and through the commission or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the qualifications [~~competence, fitness, and reputation~~] of the officers and directors of any district or authority;

(2) require, on its own motion or on complaint by any person, audits, or other financial information, inspections, evaluations, and engineering reports;

(3) issue subpoenas for witnesses to carry out its authority under this subsection;

(4) institute investigations and hearings;

(5) issue rules necessary to supervise the districts and authorities, except that such rules shall not apply to water quality ordinances adopted by any river authority which meet or exceed minimum requirements established by the commission; [~~and~~]

(6) issue a permit under Texas Health and Safety Code, Chapter 361, regardless of a district's rule or objection; and

(7) [~~(6)~~] the right of supervision granted in this subsection [~~herein~~] shall not apply to matters relating to electric utility operations.

(b) The executive director shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report of any findings made under this section.

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

Filed with the Office of the Secretary of State on May 1, 2020.

TRD-202001745
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-6087

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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §§293.11, 293.14, 293.15

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §§293.11, 293.14, and 293.15, which relates to district creation applications, required actions after district creations, and conversions of districts.

The proposed amendments implement the language set forth in Senate Bill (SB) 1234 from the 82nd Texas Legislature, 2011; SB 1987 and SB 2014 from the 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 2590, HB 2914, and SB 911 from the 86th Texas Legislature, 2019. These bills require, in part, additional information in municipal management district creation petitions; a timeline for submission of district creation election results; and changes in requirements for the conversion of certain districts to municipal utility districts.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) $700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Texas Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Texas Local Government Code, §42.042, have been followed;

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing in this chapter [~~herein~~] shall prevent the commission from creating a district with less land than included in the city consent; and

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e) and (i);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts, are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and

(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. [~~If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them.~~] The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Texas Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §§49.052, 54.022, and [§]54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee;

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land

in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board;

(E) a request specifying each purpose for which the proposed district is being created; and

(F) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement; and

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC, Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

(11) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(12) other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Texas Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district that would be subject to assessment by the[~~, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed~~] district. The petition shall include the following:

(A) a boundary description by metes and bounds, by verifiable landmarks, including a road, creek, or railroad line, or by lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District;"

(E) list of proposed initial directors and experience and term of each; and

(F) a resolution of municipality in support of creation[~~, if inside a city~~];

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Texas Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Texas Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee.

§293.14. District Reporting Actions Following Creation.

(a) A certified copy of the order canvassing results of the confirmation election shall be recorded in the office of the county clerk of each county in which a portion of the district lies and shall be submitted to the executive director not later than the 30th day after the date of the election in accordance with Texas Water Code (TWC), §49.102(e) and (f).

(b) The governing board of the district shall submit to the executive director the information required by §293.92 of this title (relating to Additional Reports and Information Required of Certain Districts) and a certificate from the county clerk of each county in which all or part of the district is located showing compliance with TWC [~~Texas Water Code~~], §49.455. The certificate shall show on its face the date of the confirmation election, and the date that the information required by TWC [~~Texas Water Code~~], §49.455, was filed with the county clerk(s).

§293.15. Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts.

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may be converted into a municipal utility district operating under the Texas Water Code (TWC), Chapter 54.

(b) The application for the conversion of a district shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors in accordance with TWC, §54.030(b) as amended by House Bill (HB) 2914, 86th Texas Legislature, 2019 and §54.030(d). The resolution required by this paragraph may be submitted after the hearing required by TWC, §54.030(b) as amended by HB 2590, 86th Texas Legislature, 2019;

(2) a $700 application fee;

(3) unless waived by the executive director, a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district; and

(5) other data and information as the executive director may require.

(c) Prior to commission action on the application for conversion the following requirements shall be met with evidence of such compliance filed with the chief clerk:

(1) Notice of the conversion application filed with the commission shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks. The notice shall:

(A) set out the resolution adopted by the district in full; and

(B) notify all interested persons how they may offer comments for or against the proposal contained in the resolution.

(2) Notice of the hearing required by TWC, §54.030(b) as amended by HB 2590, shall be given by publishing notice of the hearing in a newspaper with general circulation in the district. The notice shall be published once a week for two consecutive weeks. The notice shall:

(A) set out the resolution adopted by the district in full; and

(B) notify all interested persons how they may offer comments for or against the proposal contained in the resolution.

(3) The district shall file its resolution requesting conversion with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application for conversion to the commission.

(d) After the hearing required by TWC, §54.030(b) as amended by HB 2590, the resolution required by TWC, §54.030(d) shall be filed with the commission and mailed to each state senator and representative who represents the area in which the district is located.

(e) A special utility district formed pursuant to the TWC, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater, or other public utility services, must comply with the requirements of Texas Local Government Code, §42.042.

(f) [~~(a)~~] Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district, or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may [~~be converted into a municipal utility district operating under the Texas Water Code, Chapter 54 or~~] obtain additional wastewater and/or drainage powers.

(g) [~~(b)~~] The application for the addition of wastewater and/or drainage powers shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors requesting the commission to hold a hearing on the question of [~~conversion of the district or~~] the addition of wastewater and/or drainage powers for the district;

(2) a $700 application fee;

(3) unless waived by the executive director, a preliminary plan (22 - 24 [~~22-24~~] inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district; and[~~.~~]

(5) other data and information as the executive director may require.

(h) [~~(c)~~] Prior to the hearing for the addition of wastewater and/or drainage powers, the following requirements shall be met with evidence of such compliance filed with the chief clerk at or prior to the hearing:

(1) Notice of the hearing in a form issued by the chief clerk shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 14 days before the time set for the hearing. The notice shall:

(A) state the time and place of the hearing;

(B) set out the resolution adopted by the district in full; and

(C) notify all interested persons to appear and offer testimony for or against the proposed contained in the resolution.

(2) The [~~the~~] district shall file its resolution requesting [~~conversion or~~] additional powers with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with submitting its application [~~for conversion~~] to the commission.

[~~(d) A special utility district formed pursuant to the Texas Water Code, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater or other public utility services, must comply with the requirements of Local Government Code, §42.042.~~]

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 May 1, 2020.

TRD-202001747
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-6087

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.44

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.44, which relates to several special considerations, including the factors for financing spreading and compacting fill, and the use of bond funds to finance certain district costs and expenses.

The proposed amendment implements the language set forth in Senate Bill 2014 from the 85th Texas Legislature, 2017, which adds language regarding levee improvement district and municipal utility district bond issuances for spreading and compacting fill to provide drainage, and revises creation and organization expenses and change orders for districts; and House Bill 440, 86th Texas Legislature, 2019, which updates requirements for general obligation bonds and the use of unspent bond proceeds.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, wastewater, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights; or

(D) the district or a developer in the district has entered into an agreement with a municipality or regional water or wastewater provider regarding the oversized facilities and such oversizing is more cost-effective than alternative facilities to serve the district only. For the purposes of this subparagraph, regional water or wastewater provider means a provider that serves land in more than one county. An applicant requesting approval under this subparagraph must provide:

(i) bid documents or an engineer's sealed estimate of probable costs of alternatives that meet minimum acceptable standards based on costs prevailing at the time the facilities were constructed; or

(ii) an engineering feasibility analysis outlining the service alternatives considered at the time the decision to participate in the oversizing was made; or

(iii) any other information requested by the executive director.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project. Pursuant to the provisions of TWC, §49.4641, as amended, a district is not required to prorate the costs of a combined lake and detention site between the primary drainage purpose and any secondary recreational facilities purpose if a licensed professional engineer certifies that the site is reasonably sized for the primary drainage purpose.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, regardless of [~~notwithstanding~~ ~~that~~] other acceptable or less costly engineering alternatives that may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Creation and organization expenses are expenses incurred through the date of the canvassing of the confirmation election.

(C) [~~(B)~~] Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, operational expenses for a prior time period are no longer eligible. Payment of operational expenses during construction periods is limited to five years in any single bond issue.

(D) [~~(C)~~] Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(E) [~~(D)~~] The district may pay interest on the expenses [~~advances~~] under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, wastewater, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this paragraph, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this paragraph, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(25) The district may issue bonds to finance the costs of spreading and compacting fill to remove property from the 100-year floodplain made by a levee improvement district if the application otherwise meets all the applicable requirements for bond applications.

(26) The district may issue bonds to finance the costs of spreading and compacting fill to provide drainage that is made by a municipal utility district or a district with the powers of a municipal utility district if the costs are less than the cost of constructing or improving drainage facilities.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a licensed professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, wastewater, or drainage, under contracts authorized under Texas Local Government Code, §552.014, or

other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, wastewater, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain capacity in or acquire facilities for water, wastewater, drainage, or other service from a municipality, district, or other political subdivision, or other utility provider, and proposes to use bond proceeds to compensate the providing entity for the water, wastewater, drainage, or other services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or the providing entity has adopted a uniform service plan for such water, wastewater, drainage, and other services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided in this paragraph [~~herein~~] supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

(7) A district may utilize proceeds from the sale and issuance of bonds, notes, or other obligations to acquire an interest in a certificate of public convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities, with costs determined in accordance with applicable law such as paragraph (3) of this subsection.

(8) Regardless of any other provision of law, a district may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property, to purchase one or more items of personal property, assigned by Texas Tax Code, §1.04, or to do both, if the weighted average maturity of the issue of bonds exceeds 120% of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds.

(9) For district bond issues in which an election was held to authorize specific projects, a district may use the unspent proceeds of issued general obligation bonds only:

(A) for the specific purposes for which the bonds were authorized;

(B) to retire the bonds; or

(C) for a purpose other than the specific purposes for which the bonds were authorized if:

(i) the specific purposes are accomplished or abandoned; and

(ii) a majority of the votes cast in an election held in the district approve the use of the proceeds for the proposed purpose.

(I) The election order and the notice of election for an election described by this clause must state the proposed purpose for which the bond proceeds are to be used.

(II) A district must hold an election described by this clause in the same manner as an election to issue bonds in the district.

(10) If a district is approved for the issuance of bonds by the commission to use a certain return flow of wastewater, the approval applies to subsequent bond authorizations unless the district seeks approval to use a different return flow of wastewater.

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. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.81, §293.90

Statutory Authority

The amendment and new section are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's

general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.81, which relates to change orders, and proposes new §293.90, which relates to changes in district board meeting locations.

The proposed amendment and new section implement the language set forth in Senate Bill (SB) 2014, 85th Texas Legislature, 2017; and SB 239, 86th Texas Legislature, 2019. SB 2014 required change orders to benefit the district and removed the competitive bidding requirement to change orders. SB 239 added a process for designating an alternative meeting location for board meetings.

§293.81. Change Orders.

A change order is a change in plans, [~~and~~] specifications, or scope of work for construction work that is under contract. For purposes of this section, a variation between estimated quantities and actual quantities or use of supplemental items included in the bid where no change in plans and specifications has occurred is not a change order.

(1) Districts are authorized to issue change orders that are necessary or beneficial to the district as determined by the district's board, which alter the plans, specifications, or scope of work in the contract, subject to the following conditions.

(A) The aggregate of [~~Except as provided in this subparagraph,~~] change orders that[~~, in aggregate, shall not be issued to~~] increase the original contract price more than 25%[~~. Change orders above 25%~~] may be issued only in response to:

(i) unanticipated conditions encountered during construction, repair, or renovation;

(ii) changes in regulatory criteria; or

(iii) coordination with construction of other political subdivisions or entities.

(B) All change orders must be in writing and executed by the district and the contractor and approved by the district's engineer.

(C) The competitive bidding requirements of Texas Water Code, §49.273(d) and (e) shall not apply to change orders issued in accordance with this section.

(2) No commission approval is required if the change order is $50,000 or less. If the change order is more than $50,000, the executive director or his designated representative may approve the change order. For purposes of this section, if either the total additions or total deletions contained in the change order exceed $50,000, even though the net change in the contract price will be $50,000 or less, approval by the executive director is required.

(3) If the change order is $50,000 or less, a copy of the change order signed by the contractor and an authorized representative of the district shall be submitted to the executive director within ten days of the execution date of the change order, together with any revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required.

(4) Applications for change orders requiring approval shall include:

(A) a copy of the change order signed by an authorized officer or employee of the district and the contractor, and a resolution or letter signed by the board president indicating concurrence with the proposed change;

(B) revised construction plans and specifications approved by all agencies and entities having jurisdictional responsibilities, i.e., city, county, state, other, if required;

(C) a detailed explanation for the change;

(D) a detailed cost summary showing additions and/or deletions to the approved plans and specifications, and new contract price or cost estimate;

(E) a statement indicating amount and source of funding for the change in plans including how the available funds were generated;

(F) the number of utility connections added or deleted by the change, if any;

(G) certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H) filing fee in the amount of $100; and

(I) other information as the executive director or the commission may require.

(5) Copies of all changes in plans, specifications, and supporting documents for all water district projects will be sent directly to the appropriate commission field office, simultaneously with the submittal of the documents to the executive director.

(6) Requirements relating to change orders shall also apply to construction carried out in accordance with §293.46 of this title (relating to Construction Prior to Commission Approval), except commission approval or disapproval will not be given. Change orders which are subject to executive director approval will be evaluated during the bond application review.

§293.90. Change in Designated Meeting Location.

(a) The board shall designate one or more places inside or outside the district for conducting the meetings of the board. The meeting place may be a private residence or office, provided that the board, in its order establishing the meeting place, declares the same to be a public place and invites the public to attend any meeting of the board. If the board establishes a meeting place or places outside the district, it shall give notice of the location or locations by filing a true copy of the resolution establishing the location or locations of the meeting place or places and a justification of why the meeting will not be held in the district or within 10 miles of the boundary of the district, if applicable, with the commission and also by publishing notice of the location or locations in a newspaper of general circulation in the district. If the location of any of the meeting places outside the district is changed, notice of the change shall be given in the same manner.

(b) After at least 50 qualified electors are residing in a district, on written request of at least five of those electors, the board shall designate a meeting place and hold meetings within the district. If no suitable meeting place exists inside the district, the board may designate a meeting place outside the district that is located not further than 10 miles from the boundary of the district.

(c) On the failure, after a request is made under subsection (b) of this section, of the board to designate the location of the meeting place within the district or not further than 10 miles from the boundary of the district, five electors may petition the commission to designate a location.

(1) The petition shall include the following items: the name of the district; reason(s) why the current meeting location deprives the residents of a reasonable opportunity to attend district meetings; evidence that the petitioners have requested a change in the meeting location in accordance with subsection (b) of this section; certification that there are at least 50 qualified voters residing in the district; and evidence that the five petitioners are qualified voters residing in the district.

(2) The petition may include proposed new meeting locations and addresses.

(d) If the commission determines that the meeting place used by the district deprives the residents of a reasonable opportunity to attend district meetings, the commission shall designate a meeting place inside or outside the district which is reasonably available to the public and require that the meetings be held at such place.

(e) After holding a meeting at a place designated under subsection (b) or (c) of this section, the board may hold a hearing on the designation of a different meeting place, including a meeting place outside of the district. The board may hold meetings at the designated meeting place if, at the hearing, the board determines that the new meeting place is beneficial to the district and will not deprive the residents of the district of a reasonable opportunity to attend meetings. The board may not hold meetings at a meeting place outside the district or further than 10 miles from the boundaries of the district if the board receives a petition under subsection (c) of this section.

(f) The commission shall make a determination under subsection (c) of this section not later than the 60th day after the date the commission receives a complete petition.

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SUBCHAPTER H. REPORTS

30 TAC §293.94

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.94, which relates to the financial reporting requirements for districts.

The proposed amendment implements the language set forth in Senate Bill 911, 86th Texas Legislature, 2019, which in part, allows the executive director to request additional information from the district after reviewing the audit report, and allows the executive director to conduct on-site audits of districts.

§293.94. Annual Financial Reporting Requirements.

(a) Statutory provisions for fiscal accountability. All districts as defined in Texas Water Code (TWC), §49.001(a) are required to comply with the provisions of TWC, §§49.191 - 49.198 requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manual. All districts shall comply with the accounting and auditing manual adopted by the executive director. The manual shall consist of one publication, "Water District Financial Management Guide." The manual may be revised as necessary by the executive director.

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

(e) Audit report exemption.

(1) A district may elect to submit annual financial reports to the executive director in lieu of the district's compliance with TWC, §49.191 provided:

(A) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(B) the district did not have gross receipts from operations, loans, taxes, or contributions in excess of $250,000 during the fiscal period; and

(C) the district's cash and temporary investments were not in excess of $250,000 at any time during the fiscal period.

(2) The annual financial report must be accompanied by an affidavit, attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(f) Financially dormant districts.

(1) A district may elect to prepare a financial dormancy affidavit rather than an unaudited financial report, as prescribed by subsection (e) of this section, provided:

(A) the district had $500 or less of receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(B) the district had $500 or less of disbursements of funds during the calendar year;

(C) the district had no bonds or other long-term (more than one year) liabilities outstanding during the calendar year; and

(D) the district did not have cash or investments in excess of $5,000 at any time during the calendar year.

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director and shall be submitted by a duly authorized representative of the district. Financial dormancy affidavit forms may be obtained from the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director.

(g) Annual filing affidavit. Each district shall submit annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that submits an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is submitted with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the executive director.

(h) Submitting of audits, financial reports, and affidavits.

(1) Submittal dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be submitted as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year. Audit reports and the accompanying annual filing affidavits submitted by a special water authority, as defined in TWC, §49.001(8), shall be submitted as prescribed by paragraph (2) of this subsection within 160 days after the close of the special water authority's fiscal year. The governing board of the district or special water authority shall approve the audit before a copy of the report is submitted to the executive director; however, the governing board's refusal to approve the audit shall not extend the submittal deadline for the audit report. If the governing board refuses to approve the audit, the board shall submit to the executive director by the prescribed submittal date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits in a format prescribed by the executive director, must be submitted to the executive director as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

(C) Financial dormancy affidavits. Financial dormancy affidavits shall be submitted as prescribed by paragraph (2) of this subsection by January 31st [~~31~~] of each year. The calendar year affidavit affirms that the district met the financial dormancy requirements stated in subsection (f) of this section during part or all of the calendar year immediately preceding the January 31st [~~31~~] filing date.

(2) Submittal locations. Copies of the audit, financial report, or financial dormancy affidavit described in subsections (c), (e), and (f) of this section shall be submitted annually to the executive director, and within the district's office.

(i) Review by executive director.

(1) The executive director may review the audit report of each district. After reviewing the audit report, the executive director may request additional information from the district. The district shall provide the additional information not later than the 60th day after the date the request was received, unless the executive director extends the time allowed for the district to provide additional information for good cause. If[, ~~and if~~] the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, the executive director shall notify the governing board of the district.

(2) Before the audit report may be accepted by the executive director as being in compliance with the provisions of this section, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the executive director.

(3) Districts governed by this section are subject to periodic audits by the executive director. The executive director may review and investigate a district's financial records and may conduct an on-site audit of a district's financial information. The executive director shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the executive director considers necessary for the review, analysis, and approval of an audit report, financial report, or financial dormancy affidavit.

(j) Penalties for Noncompliance.

(1) The executive director shall file with the attorney general the names of any districts that do not comply with the provisions of this subchapter.

(2) A district that fails to comply with the filing provisions of TWC, Chapter 49, may be subject to a civil penalty of up to $100 per day for each day the district willfully continues to violate these provisions after receipt of written notice of violation from the executive director by certified mail, return receipt requested. The state may sue to recover the penalty.

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

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SUBCHAPTER L. DISSOLUTION OF DISTRICTS

30 TAC §§293.132 - 293.136

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts.

The proposed repeal of the sections implements TWC, §§5.102, 5.103, 5.105, 5.013, and 12.081.

§293.132. Notice of Hearing.

§293.133. Investigation by the Staff of the Commission.

§293.134. Order of Dissolution.

§293.135. Certified Copy of Order to be Filed in the Deed Records.

§293.136. Filing Fee.

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30 TAC §§293.132 - 293.137

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts.

The proposed new sections implement the language set forth in House Bill 2914, 86th Texas Legislature, 2019, which in part, allows the commission to dissolve a district without having a public hearing.

§293.132. Applications for Order without Hearing.

(a) The commission may adopt an order under Texas Water Code (TWC), §49.324 without conducting a hearing if it receives a petition under this section from the owners of the majority in value of the land in the district, as shown by the most recent certified tax roll of the central appraisal district of the county or counties in which the district is located, or the board of directors of the district. A petition for dissolution under this section must include the items required by §293.131(2)(A) - (E), (G), and (H) of this title (relating to Authorization for Dissolution of Water District by the Commission).

(b) Not later than the 10th day after the date a complete petition is submitted under this section, the petitioners shall:

(1) provide notice of the petition by certified mail:

(A) to all the landowners in the district, as shown by the most recent certified tax roll of the central appraisal district of the county or counties in which the district is located, who did not sign the petition; and

(B) if the petition was submitted by the owners of a majority in value of the land in the district, to the board of directors; and

(2) certify in writing to the commission that the requirements of paragraph (1) of this subsection have been met.

(c) A notice provided under subsection (b)(1) of this section must state that the landowner may file a written objection to the dissolution of the district not later than the 30th day after the date the notice was received.

(d) If a landowner files a written objection to the dissolution of the district with the commission within the period specified in the notice, the commission shall hold a hearing on the dissolution of the district. The commission shall mail notice of the hearing by first class mail to:

(1) the petitioners, and the board of directors if the board of directors did not submit the petition; and

(2) each landowner who timely filed a written objection to the dissolution.

(e) A district may not be dissolved under this section or any other provision of law if the district:

(1) has any outstanding bonded indebtedness unless the bonded indebtedness is assumed by a third party, or repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds;

(2) has a contractual obligation to pay money unless the obligation is assumed by a third party, fully paid in accordance with the contract, or waived by the obligee; or

(3) owns, operates, or maintains public works, facilities, or improvements, unless the ownership, operation, or maintenance is assumed by a third party.

§293.133. Notice of Hearing.

For a dissolution that does not meet the provisions of §293.132 of this title (relating to Applications for Order without Hearing), notice of the hearing upon the proposed dissolution of a district will be given by the chief clerk and will describe the reasons for the proceeding, as required by Texas Water Code, §49.322. The notice will be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication will be 30 days before the day of the hearing. Notice of the hearing will be given by the chief clerk by first class mail addressed to the directors of the district according to the last record on file with the executive director.

§293.134. Investigation by the Staff of the Commission.

The executive director will examine the application and the facts and circumstances contained in the application and prepare a written report which will be filed with the chief clerk two weeks prior to the hearing as prepared testimony. A copy of the written report will be mailed to any landowner, director, or other interested party who has filed an application for dissolution of the district or has requested notice of the hearing or otherwise indicated an interest in the proceeding.

§293.135. Order of Dissolution.

For districts created under Texas Water Code, Chapter 49, following the hearing, or for an order without hearing, the commission or executive director will enter an order that the district be dissolved if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding, or petition, and the district has no outstanding bonded indebtedness. The commission or executive director may enter an order that the district not be dissolved if it finds that the application lacks sufficient documentation. If the district is ordered dissolved, the order shall contain a provision that the assets of the district shall escheat to the state of Texas and shall be administered by the state treasurer and disposed of in the manner provided by Texas Property Code, Chapter 74.

§293.136. Certified Copy of Order to be Filed in the Deed Records.

The commission shall cause to be filed a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the district was created by a special act of the legislature, the commission shall cause to be filed a certified copy of the order of dissolution with the secretary of state of the state of Texas.

§293.137. Filing Fee.

The fee for filing an application for the dissolution of a water district is $100, plus the cost of required notice.

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SUBCHAPTER P. ACQUISITION OF ROAD POWERS BY A MUNICIPAL UTILITY DISTRICT

30 TAC §293.201, §293.202

Statutory Authority

The amendments are proposed under Texas Water Code, (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013, gives the commission continuing supervision over districts; and TWC, §12.081, gives the commission the authority to issue rules necessary to supervise districts. Therefore, the TWC authorizes rulemaking that amends §293.201 and §293.202 which relates to the cost analysis for road projects.

The proposed amendments implement the language set forth in House Bill 2590, 86th Texas Legislature, 2019, which add, in part, additional powers related to road projects which can be included in the petition for road powers.

§293.201. Acquisition of Road Powers by a Municipal Utility District.

(a) Texas Water Code (TWC), §54.234, authorizes a municipal utility district, or any petitioner seeking the creation of a municipal utility district, to petition the commission to acquire road powers [~~for eligible roads under TWC, §54.234(b),~~] and any improvement in aid of the roads, which are to be conveyed to this state, a county, or municipality for operation and maintenance.

(b) This section and §293.202 of this title (relating to Application Requirements for Commission Approval) provide the requirements for petitioning the commission for road powers.

§293.202. Application Requirements for Commission Approval.

(a) A conservation and reclamation district, operating under Texas Water Code (TWC), Chapter 54, may submit to the executive director of the commission an application for road powers, which shall include the following documents:

(1) a petition that will include a detailed narrative statement of the reasons for requesting road powers and the reasons why such powers will be of benefit to the district and to the land that is included in the district, signed by an authorized member of the board of directors of the district;

(2) a certified copy of the resolution of the governing board of the district authorizing the district to petition the commission for road powers;

(3) a certification that the district is operating under TWC, Chapter 54, with proper statutory references;

(4) evidence that the municipality in whose corporate limits or extraterritorial jurisdiction that any part of the district is located has consented to the creation of the district with road powers or has consented to the district having road powers subsequent to creation, or that the provisions of TWC, §54.016, have been followed;

(5) a certified copy of the latest audit of the district performed under TWC, §§49.191 - 49.194;

(6) for districts that have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date that the district submits its request for approval with the executive director;

(7) a preliminary layout showing the proposed location for all road facilities to be constructed, acquired, or improved by the district;

(8) a cost analysis and detailed cost estimate of the proposed road facilities to be designed, acquired, constructed, operated, maintained [~~acquired~~], or improved by the district with a statement of the amount of bonds estimated to be necessary to finance the proposed design, acquisition, construction, operation, maintenance [~~acquisition~~], and improvement;

(9) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district;

(10) any other information that may be required by the executive director; and

(11) a filing fee in the amount of $100.

(b) A petition for creation of a district submitted under §293.11(a) and (d) of this title (relating to Information Required to Accompany Applications for Creation of Districts) may also include a request for road powers, with information required under subsection (a)(4)[~~,~~] and (7) - (9) of this section, to also be provided.

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 May 1, 2020.

TRD-202001754
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-6087

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §305.53

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §305.53.

Background and Summary of the Factual Basis for the Proposed Rule

House Bill (HB) 1331, passed by the 86th Texas Legislature, 2019, creates new Texas Health and Safety Code (THSC), §361.0675, to require the commission to increase the application fee for a permit for a municipal solid waste facility from $100 to $2,000. The commission determined that the $2,000 application fee would only apply to applications for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill. All other application fees would remain unchanged. Under §305.53(b), the application fee must also include an additional fee of $50 to be applied toward the cost of providing required notice. This would result in a total application fee of $2,050.

In corresponding rulemaking published in this issue of the *Texas Register,* the commission also proposes to amend 30 TAC Chapter 330, Municipal Solid Waste.

Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as, grammatical corrections and updating cross-references. These changes are generally not specifically discussed in this preamble.

§305.53, Application Fee

The commission proposes to amend §305.53(a)(7) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill to $2,000. The subsequent paragraph will be renumbered.

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 state because of the fee increase for a permit or major permit amendment for a municipal solid waste landfill.

This rulemaking is necessary to implement HB 1331, which increased the permit and major permit amendment application fee for a municipal solid waste landfill.

The proposed rulemaking would increase the fee from $150 to $2,050 per application, or an increase of $1,900 each. Based on the data from the last five years, the agency anticipates receiving 11 applications per year for an annual increase to the state's General Revenue Account of $20,900 per year for the next five years.

Units of local government may also see an impact if they seek to obtain a permit for a municipal solid waste landfill or a major permit amendment for an existing facility. The proposed rulemaking would increase the fee from $150 to $2,050 per application. Currently, 66% of municipal solid waste landfills are operated by units of local government. The agency estimates that seven applications would be received each year from units of local government.

Public Benefits and Costs

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

The proposed rulemaking may result in a fiscal impact for businesses or individuals if they seek to obtain a permit or major permit amendment for a municipal solid waste landfill. The proposed rulemaking would increase the fee from $150 to $2,050 per application. The agency estimates that 33% of municipal solid waste landfills are operated by businesses or individuals. The agency anticipates approximately four applications per year from 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 would not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

The agency estimates that 13 small and micro-businesses may be affected by the fee increase for a permit or major permit amendment for a municipal solid waste landfill; it is estimated that four small businesses and nine micro-businesses meet this criterion and are currently regulated by the agency.

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

In determining the potential for an adverse effect, the agency considered that a municipal solid waste landfill permit lasts for the duration of the facility and multiple fees are not necessary unless the business owner elects to expand the landfill. The agency also considered other factors such as the relative costs associated with financial assurance and expertise required for the permit application and facility design.

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 nor eliminate current employee positions. The proposed rulemaking would increase the fee for a permit or major permit amendment for a municipal solid waste landfill. This would result in an increase of fees paid to the agency. The proposed rulemak-

ing 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 rule to determine whether a regulatory analysis is required by Texas Government Code, §2001.0225, and determined that the proposed rule 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 under Texas Government Code, §2001.0225(g)(3) as "a rule the specific intent of which is to protect the environment or reduce risks to human health from the environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The proposed rule does not meet the two prongs of the major environmental rule standard. First, the rule only changes the required fee for a solid waste permit, but does not change any technical or substantive regulatory requirements. Therefore, it does not satisfy the first prong related to intent.

Second, changing the amount of the fee already required by current rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, or jobs nor 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 rule also fails the second prong of the major environmental rule standard.

Additionally, the proposed rule does not meet any of the applicability criteria in Texas Government Code, §2001.0225(a)(1-4). The proposed rule would not exceed a standard set by federal or state law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency. The proposed rule implements and is adopted under the authority of new state laws and would not exceed any requirements of our delegated authority.

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

Takings Impact Assessment

The commission evaluated the proposed rule and performed an analysis of whether the proposed rule constitutes a takings under Texas Government Code, Chapter 2007. The specific purpose of this proposed rule is to implement HB 1331, requiring the commission to increase the application fee for a municipal solid waste landfill permit or major permit amendment to $2,000. The proposed rule would substantially advance this stated purpose by amending §305.53(7) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for a municipal solid waste landfill to $2,000.

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 increasing application fees does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the proposed rule would not affect real property in a manner that is different than real property would have been affected without the proposed rules.

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) and (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.

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 2020-006-305-WS. The comment period closes on June 16, 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 Ruben Meza, Municipal Solid Waste Permits Section, (512) 239-2580.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.0675, which requires the commission to increase the application fee for a permit or major permit amendment for a municipal solid waste landfill to $2,000.

The proposed amendment implements THSC, §361.0675.

§305.53. Application Fee.

(a) Except for radioactive material licenses or as specifically provided hereunder, an applicant shall include with each application a fee of $100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is $100. The fee for each disposal well which will be authorized to receive hazardous waste is $2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than $2,000 and not more than $50,000 as calculated in accordance with the following:

(A) site evaluation - $100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis - $1,000;

(C) facility unit(s) analysis - $500 per unit;

(D) management/facility analysis - $500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the $500 per unit fee; except that multiple storage tanks or container storage area identical in type and use will be subject to a single $500-unit [~~$500 unit~~] fee.

(4) The permit application fee for water use permits shall be submitted in accordance with Subchapter B of this chapter (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) [~~§§295.131 - 295.140 of this title (relating to Water Use Permit Fees)~~].

(5) The permit application fee for mine shaft permits shall be submitted in accordance with §329.9 of this title (relating to Procedures for Application [~~Applications~~]).

(6) The permit application fees for wastewater disposal permits shall not be less than $100 and not more than $2,000 as follows.

(A) Agricultural permit applications fees are as follows:

(i) minor amendments - $100; and

(ii) new, amendment, and renewal applications - $300.

(B) Domestic wastewater permit application fees are based upon the following flow categories:

(i) minor amendments - $100;

(ii) new, amendment, and renewal applications less than 50,000 gallons per day - $300;

(iii) new, amendment, and renewal applications 50,000 to less than 100,000 gallons per day - $500;

(iv) new, amendment, and renewal applications 100,000 to less than 250,000 gallons per day - $800;

(v) new, amendment, and renewal applications 250,000 to less than 500,000 gallons per day - $1,200;

(vi) new, amendment, and renewal applications 500,000 to less than 1 million gallons per day - $1,600; and

(vii) new, amendment, and renewal applications 1 million and greater gallons per day - $2,000.

(C) Municipal stormwater [~~storm water~~] permit application fees as follows:

(i) minor amendments - $100; and

(ii) new, major amendments, and renewal applications - $2,000.

(D) Industrial wastewater permit application fees are based upon the United States Environmental Protection Agency (EPA) [~~EPA~~] major/minor designation and the commission assigned toxicity rating as follows:

(i) minor amendments for minor facilities - $100;

(ii) minor amendments for major facilities - $400;

(iii) new, amendment, and renewal applications for minor facilities that are not subject to categorical standards promulgated by EPA (40 Code of Federal Regulations, Part 400) - $300;

(iv) new, amendment, and renewal applications for minor facilities that must comply with a categorical standard promulgated by the EPA (40 Code of Federal Regulations, Part 400) - $1,200; and

(v) new, amendment, and renewal applications for major facilities - $2,000.

(7) The permit application fee for a permit, or a major permit amendment as provided in §305.62(j)(1) of this title (relating to Amendments), for a municipal solid waste landfill is $2,000.

(8) [~~(7)~~] The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Commission on Environmental Quality for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees in accordance with paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application for a new, amended, or modified permit a fee of $50 to be applied toward the cost of providing required notice. A fee of $15 is required with each application for renewal. This subsection does not apply to radioactive material licenses.

(c) Each application for a radioactive material license shall be accompanied by the applicable fee. The fee for a license shall be calculated in accordance with Chapter 336, Subchapter B of this title (relating to Radioactive Substance Fees).

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 May 1, 2020.

TRD-202001746
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§330.3, 330.13, 330.59, and 330.73; and proposes the repeal of §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, and 330.289.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 1331, passed by the 86th Texas Legislature, 2019, creates new Texas Health and Safety Code (THSC), §361.0675, to require the commission to increase the application fee for a permit for a municipal solid waste (MSW) facility from $100 to $2,000. The commission determined that the $2,000 application fee would only apply to applications for a permit, or major permit amendment as provided in 30 Texas Administrative Code (TAC) §305.62(j)(1), for an MSW landfill. All other application fees would remain unchanged. Under §305.53(b), the application fee must also include an additional fee of $50 to be applied toward the cost of providing required notice. This would result in a total application fee of $2,050.

HB 1435, passed by the 86th Texas Legislature, 2019, amends THSC, §361.088, to require the commission to confirm information included in an application for a permit for an MSW facility by performing a site assessment before the agency issues the authorization. HB 1435 also requires the commission to specify the information that would be confirmed during the site assessment. The commission determined that the site assessments would only apply to applications for a permit, or major permit amendment as provided in §305.62(j)(1), for an MSW landfill. In addition, the information that would be confirmed during site assessments would be prescribed by the executive director and would be made available to the public.

HB 1953, passed by the 86th Texas Legislature, 2019, creates new THSC, §361.041, and amends THSC, §§361.003, 361.119, and 361.421, to require the commission to exempt facilities that reuse or convert recyclable materials, including post-use polymers and recoverable feedstocks, in a pyrolysis or gasification process, from regulation as an MSW facility.

On October 9, 2019, as a result of the Quadrennial Rules Review, the commission determined that the rules in Chapter 330, Subchapter F, are obsolete because the requirements of Subchapter F expired on January 1, 2009 (2019-066-330-WS).

In corresponding rulemaking published in this issue of the *Texas Register,* the commission also proposes to amend 30 TAC Chapter 305, Consolidated Permits.

Section by Section Discussion

The commission proposes to make various stylistic, non-substantive changes, such as, grammatical corrections and updating cross-references. These changes are generally not specifically discussed in this preamble.

SUBCHAPTER A: GENERAL INFORMATION

§330.3, Definitions

The commission proposes to add definitions and amend other definitions to exempt pyrolysis and gasification of post-use polymers from regulation under Chapter 330.

The commission proposes §330.3(58) to add the definition of "Gasification" to reflect its exclusion from the definition of "processing" by HB 1953.

The commission proposes §330.3(59) to add the definition of "Gasification facility" to reflect its exclusion from the definition of "solid waste facility" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes §330.3(117) to add the definition of "Post-use polymers" to reflect its exclusion from the definition of "solid waste" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes to amend renumbered §330.3(120) to specify that pyrolysis facilities and gasification facilities are excluded from the definition of "processing."

The commission proposes §330.3(123) to add the definition of "Pyrolysis" to reflect its exclusion from the definition of "processing" by HB 1953.

The commission proposes §330.3(124) to add the definition of "Pyrolysis facility" to reflect its exclusion from the definition of "solid waste facility" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes §330.3(127) to add the definition of "Recoverable feedstock" to reflect its exclusion from the definition of "solid waste" by HB 1953. The subsequent paragraphs would be renumbered.

The commission proposes to amend renumbered §330.3(128) to include post-use polymers and recoverable feedstocks that are converted through pyrolysis or gasification into valuable raw, intermediate, and final products as a "Recyclable material".

The commission proposes to amend renumbered §330.3(151)(D) to exclude pyrolysis facilities and gasification facilities.

§330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification

The commission proposes §330.13(g) to add an exempt activity for beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes.

SUBCHAPTER B: PERMIT AND REGISTRATION APPLICATION PROCEDURES

§330.59, Contents of Part I of the Application

The commission proposes §330.59(h)(1) to increase the application fee for a permit, or major permit amendment as provided in §305.62(j)(1), for an MSW landfill to $2,050. The subsequent paragraphs would be renumbered.

The commission proposes to amend renumbered §330.59(h)(2) to indicate that the application fee for a permit, registration, amendment, modification, or temporary authorization not subject to §330.59(h)(1) would be $150.

§330.73, Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities

The commission proposes §330.73(c), to require that before an application for a permit, or major permit amendment as provided in §305.62(j)(1) for an MSW landfill, would be issued, the executive director shall perform a site assessment of the facility, as prescribed by the executive director, to confirm information included in the application. The subsequent subsections would be re-lettered.

SUBCHAPTER F: ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL

The commission proposes the repeal of Subchapter F, §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277. 330.279, 330.281, 330.283, 330.285, 330.287, and 330.289, as a result of the Quadrennial Rules Review of Chapter 330; Subchapter F is no longer needed because it expired on January 1, 2009.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency and the state because of probable increased travel expenses and a fee increase for a permit or major permit amendment for an MSW landfill.

This rulemaking addresses changes required to implement several pieces of legislation, HB 1331, HB 1435, and HB 1953.

HB 1435 requires the agency to perform onsite assessments as described in the proposed §330.73. The agency estimates that these additional assessments will increase travel expenses $3,461 per year for the next five years.

The proposed rulemaking references a proposed fee increase in Chapter 305; the fee for permits or major permit amendments for an MSW landfills will increase from $150 to $2,050 per application, or an increase of $1,900 each. Based on the data from the last five years, the agency anticipates receiving 11 applications per year for an annual increase to the state's General Revenue Account of $20,900 per year for the next five years.

The agency does not anticipate a fiscal impact from the proposed repeal of obsolete sections in Chapter 330, Subchapter F, nor does it anticipate a fiscal impact from the implementation of HB 1953 relating to the conversion of plastics and other recoverable materials through pyrolysis or gasification.

Units of local government may also see an impact if they seek to obtain a permit or a major permit amendment for an MSW landfill. The proposed rulemaking increases the fee from $150 to $2,050 per application. Currently 66% of MSW landfills are operated by units of local government. The agency estimates that seven applications would be received each year from units of local government.

Public Benefits and Costs

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

The proposed rulemaking may result in a fiscal impact for businesses or individuals if they seek to obtain a permit or major permit amendment for an MSW landfill. The proposed rulemaking increases the fee from $150 to $2,050 per application. The agency estimates that 33% of MSW landfills are operated by businesses or individuals. The agency anticipates approximately four applications per year from businesses or individuals.

The agency does not anticipate a fiscal impact from the repeal of obsolete sections in Chapter 330, Subchapter F, nor does it anticipate a fiscal impact from the implementation of HB 1953 relating to the conversion of plastics and other recoverable materials through pyrolysis or gasification.

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 rules would be in effect.

Rural Communities Impact Assessment

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 rules would in effect. The rules would apply statewide and would have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

The agency estimates that 13 small and micro-businesses may be affected by the fee increase for a permit or major permit amendment for an MSW landfill; it is estimated that four small businesses and nine micro-businesses meet this criterion and are currently regulated by the agency.

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

In determining the potential for an adverse effect, the commission considered that an MSW landfill permit lasts for the duration of the facility and multiple fees are not necessary unless the business owner elects to expand the landfill. The commission also considered other factors such as the relative costs associated with financial assurance and expertise required for the permit application and facility design.

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 nor eliminate current employee positions. The proposed rulemaking would increase the fee for a permit or major permit amendment for an MSW landfill. This would result in an increase of fees paid to the agency. The proposed rulemaking expands an existing regulation by requiring a site assessment of pending permit and major permit amendment applications for MSW landfills, as required by state law. The proposed rulemaking would repeal obsolete regulations in Chapter 330, Subchapter F. Additionally, the proposed rulemaking would decrease the number of individuals subject to its applicability by exempting pyrolysis and gasification facilities from the authorization requirements of Chapter 330, as required by state law. During the first five years, the proposed rulemaking should not impact positively or negatively the state economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rules to determine whether a regulatory analysis is required by Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined under Texas Government Code, §2001.0225(g)(3) as "a rule the specific intent of which is to protect the environment or reduce risks to human health from the environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

The specific intent of the proposed rules satisfies the first prong of the definition. The rules implement the agency's requirement to confirm application information by performing a site assessment and exempt the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes, both of which further the intent to protect the environment or reduce risks to human health from environmental exposure.

However, the proposed rules do not meet the second prong of the definition of "Major environmental rule" by adversely affecting, in a material way, the economy, a sector of the economy, productivity, competition, or jobs because the proposed rules do not require more from an applicant than is required by current rules. Additionally, the proposed rules are not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the proposed rules specify new administrative requirements and an exemption from the regulatory process for a recycling activity.

In addition, the proposed rules do not meet any of the applicability criteria in Texas Government Code, §2001.0225(a)(1-4). The proposed rules do not exceed a standard set by federal or state law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency. The proposed rules implement and would be adopted under the authority of new state laws and do not exceed any requirements of our delegated authority.

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

Takings Impact Assessment

The commission evaluated these proposed rules and performed analysis of whether these proposed rules would constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement HB 1331, which creates new THSC, §361.0675 to require the commission to increase the application fee for a permit or major permit amendment for an MSW landfill to $2,000; HB 1435 amends THSC, §361.088 to require the commission to confirm information included in an application for a permit or major permit amendment for an MSW landfill by performing a site assessment of the facility before the agency issues the authorization; and HB 1953 creates new THSC, §361.041, and amends THSC, §§361.003, 361.119, and 361.421 to exempt from regulations the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes. The proposed rules would also repeal Chapter 330, Subchapter F which expired on January 1, 2009, and is, therefore, obsolete and no longer needed. The proposed rules would substantially advance this stated purpose by increasing the application fee for a permit or major permit amendment for an MSW landfill to $2,000; requiring the executive director to confirm information included in an MSW facility application by requiring a site assessment of the proposed facility before a permit or major amendment may be issued; exempting the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes from regulation under Chapter 330; and repealing Chapter 330, Subchapter F.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations would do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the proposed rules would not affect real property in a manner that is different than real property would have been affected without the proposed rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the proposed rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities. These rules ensure that new and existing solid waste facilities continue to be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and ensure compliance with federal Solid Waste Disposal Act standards, 42 United States Code, §§6901, *et seq.*

Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, do not create or have a direct or significant adverse effect on any CNRAs, and would update and enhance the commission's rules concerning MSW facilities.

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

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 2020-006-305-WS. The comment period closes on June 16, 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 Ruben Meza, P.E., Municipal Solid Waste Permits Section, (512) 239-2580.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.3, §330.13

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102 which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, 5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and THSC, §361.041, which allows the commission to exempt from regulations the beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes.

The proposed amendments implement THSC, §§361.003, 361.041, 361.119, and 361.421.

§330.3. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 100-year flood--A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) Active disposal area--All landfill working faces and areas covered with daily and alternative daily cover.

(3) Active life--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.451, 330.453, 330.455, 330.457, and 330.459 [~~§§330.451 - 330.459~~] of this title (relating toApplicability; Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Storage and Processing Units [~~Closure and Post-Closure~~]).

(4) Active portion--That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.451, 330.453, 330.455, 330.457, and 330.459 [~~§§330.451 - 330.459~~] of this title (relating to Applicability; Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Storage and Processing Units [~~Closure and Post-Closure~~]).

(5) Airport--A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

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

(7) Animal crematory--A facility for the incineration of animal remains that meets the following criteria:

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

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

(C) control of the emission of the combustion products.

(8) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(9) Areas susceptible to mass movements--Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(10) Asbestos-containing materials--Include the following.

(A) Category I nonfriable asbestos-containing material means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 Code of Federal Regulations (CFR) Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable asbestos-containing material means any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(11) ASTM--The American Society for Testing and Materials.

(12) Battery--An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

(13) Battery acid (also known as electrolyte acid)--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(14) Battery retailer--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(15) Battery wholesaler--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(16) Bird hazard--An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(17) Boiler--An enclosed device using controlled flame combustion and having the following characteristics.

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

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

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

(ii) fluidized bed combustion units.

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

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

(18) Brush--Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(19) Buffer zone--A zone free of municipal solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator.

(20) Citizens' collection station--A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles), except that in small communities where regular collections are not available, small quantities of commercial waste may be deposited by the generator of the waste. The facility may consist of one or more storage containers, bins, or trailers.

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

(22) Class 2 wastes--Any individual solid waste or combination of industrial solid waste that are not described as Hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

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

(24) Collection--The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(25) Collection system--The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(26) Commence physical construction--The initiation of physical on-site construction on a site for which an application to authorize a municipal solid waste management unit is pending, the construction of which requires approval of the commission. Construction of actual waste management units and necessary appurtenances requires approval of the commission, but other features not specific to waste management are allowed without commission approval.

(27) Commercial solid waste--All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(28) Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(29) Composite liner--A liner system consisting of two components: the upper component must consist of a minimum 30-mil geomembrane liner or minimum 60-mil high-density polyethylene, and the lower component must consist of at least a two-foot layer of re-compacted soil deposited in lifts with a hydraulic conductivity of no more than 1×10^{-7} centimeters/second. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(30) Compost--The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(31) Composting--The controlled biological decomposition of organic materials through microbial activity.

(32) Conditionally exempt small-quantity generator--A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(33) Construction or demolition waste--Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(34) Container--Any portable device in which a material is stored, transported, or processed.

(35) Contaminate--To alter the chemical, physical, biological, or radiological integrity of ground or surface water by man-made or man-induced means.

(36) Contaminated water--Leachate, gas condensate, or water that has come into contact with waste.

(37) Controlled burning--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(38) Discard--To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(39) Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(40) Discharge of dredged material--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(41) Discharge of fill material--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(42) Discharge of pollutant--Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(43) Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

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

(45) Dredged material--Material that is excavated or dredged from waters of the United States.

(46) Drinking-water intake--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(47) Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(48) Endangered or threatened species--Any species listed as such under the Federal Endangered Species Act, §4, 16 United States Code, §1536, as amended or under the Texas Endangered Species Act.

(49) Essentially insoluble--Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(50) Existing municipal solid waste landfill unit--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993.

(51) Experimental project--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(52) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(53) Fault--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(54) Fill material--Any material used for the primary purpose of filling an excavation.

(55) Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(56) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(57) Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(58) Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel. The term does not include incineration.

(59) Gasification facility--A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification. The commission may not consider a gasification facility to be a hazardous waste management facility, a solid waste management facility, or an incinerator.

(60) [~~(58)~~] Generator--Any person, by site or location, that produces solid waste to be shipped to any other person, or whose act or process produces a solid waste or first causes it to become regulated.

(61) [~~(59)~~] Grease trap waste--Material collected in and from a grease interceptor in the sanitary sewer service line of a

commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

(62) [~~(60)~~] Grit trap waste--Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(63) [~~(61)~~] Groundwater--Water below the land surface in a zone of saturation.

(64) [~~(62)~~] Hazardous waste--Any 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, 42 United States Code, §§6901 *et seq.,* as amended.

(65) [~~(63)~~] Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(66) [~~(64)~~] Household waste--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include brush.

(67) [~~(65)~~] Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace, as defined in §335.1 of this title (relating to Definitions); or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(68) [~~(66)~~] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(69) [~~(67)~~] Inert material--A natural or man-made nonputrescible, nonhazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(70) [~~(68)~~] Infrared incinerator--Any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and is not listed as an industrial furnace as defined in §335.1 of this title (relating to Definitions).

(71) [~~(69)~~] Injection well--A well into which fluids are injected.

(72) [~~(70)~~] In situ--In natural or original position.

(73) [~~(71)~~] Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(74) [~~(72)~~] Lateral expansion--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(75) [~~(73)~~] Land application of solid waste--The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(76) [~~(74)~~] Land treatment unit--A solid waste management unit at which solid waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such units are disposal units if the waste will remain after closure.

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

(78) [~~(76)~~] Landfill cell--A discrete area of a landfill.

(79) [~~(77)~~] Landfill mining--The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

(80) [~~(78)~~] Leachate--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(81) [~~(79)~~] Lead acid battery--A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(82) [~~(80)~~] License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(83) [~~(81)~~] Liquid waste--Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(84) [~~(82)~~] Litter--Rubbish and putrescible waste.

(85) [~~(83)~~] Low volume transfer station--A transfer station used for the storage of collected household waste limited to a total storage capacity of 40 cubic yards located in an unincorporated area that is not within the extraterritorial jurisdiction of a city.

(86) [~~(84)~~] Lower explosive limit--The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(87) [~~(85)~~] Medical waste--Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(88) [~~(86)~~] Monofill--A landfill or landfill cell into which only one type of waste is placed.

(89) [~~(87)~~] Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

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

(91) [~~(89)~~] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(92) [~~(90)~~] Municipal solid waste landfill unit--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste (MSW) landfill unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSW landfill unit may be a new MSW landfill unit, an existing MSW landfill unit, a vertical expansion, or a lateral expansion.

(93) [~~(91)~~] New facility--A municipal solid waste facility that has not begun construction.

(94) [~~(92)~~] Nonpoint source--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(95) [~~(93)~~] Non-regulated asbestos-containing material--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(96) [~~(94)~~] Notification--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(97) [~~(95)~~] Nuisance--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(98) [~~(96)~~] Open burning--The combustion of solid waste without:

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

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

(C) control of the emission of the combustion products.

(99) [~~(97)~~] Operate--To conduct, work, run, manage, or control.

(100) [~~(98)~~] Operating hours--The hours when the facility is open to receive waste, operate heavy equipment, and transport materials on- or off-site.

(101) [~~(99)~~] Operating record--All plans, submittals, and correspondence for a municipal solid waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(102) [~~(100)~~] Operation--A municipal solid waste (MSW) site or facility is considered to be in operation from the date that solid waste is first received or deposited at the MSW site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(103) [~~(101)~~] Operator--The person(s) responsible for operating the facility or part of a facility.

(104) [~~(102)~~] Owner--The person that owns a facility or part of a facility.

(105) [~~(103)~~] Permitted landfill--Any type of municipal solid waste landfill that received a permit from the State of Texas to operate and has not completed post-closure operations.

(106) [~~(104)~~] Physical construction--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent construction commences within 180 days of the date that the building permit was issued.

(107) [~~(105)~~] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and not listed as an industrial furnace as defined by §335.1 of this title (relating to Definitions).

(108) [~~(106)~~] Point of compliance--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the facility.

(109) [~~(107)~~] Point source--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(110) [~~(108)~~] Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(111) [~~(109)~~] Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(112) [~~(110)~~] Polychlorinated biphenyl (PCB)--Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contains such substance.

(113) [~~(111)~~] Polychlorinated biphenyl (PCB) waste(s)--Those PCBs and PCB items that are subject to the disposal require-

ments of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(114) [~~(112)~~] Poor foundation conditions--Areas where features exist, indicating that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(115) [~~(113)~~] Population equivalent--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards.

(116) [~~(114)~~] Post-consumer waste--A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(117) Post-use polymers--Plastic polymers that derive from any household, industrial, community, commercial, or other sources of operations or activities that might otherwise become waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.

(118) [~~(115)~~] Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(119) [~~(116)~~] Process to further reduce pathogens--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(120) [~~(117)~~] Processing--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. The term does not include pyrolysis or gasification.

(121) [~~(118)~~] Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(122) [~~(119)~~] Putrescible waste--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that are capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(123) Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere until melted and thermally decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel. The term does not include incineration.

(124) Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis. The commission may not consider a pyrolysis facility to be a hazardous waste management facility, a solid waste management facility, or an incinerator.

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

(126) [~~(121)~~] Radioactive waste--Waste that requires specific licensing under 25 TAC Chapter 289 (relating to Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code.

(127) Recoverable feedstock--One or more of the following materials, derived from recoverable waste other than coal refuse, that has been processed so that it may be used as feedstock in a gasification facility:

(A) post-use polymers; and

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

(128) [~~(122)~~] Recyclable material--A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. The term includes post-use polymers and recoverable feedstocks that are converted through pyrolysis or gasification into valuable raw, intermediate, and final products. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(129) [~~(123)~~] Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

(130) [~~(124)~~] Refuse--Same as rubbish.

(131) [~~(125)~~] Registration--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(132) [~~(126)~~] Regulated asbestos-containing material--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(133) [~~(127)~~] Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

(134) [~~(128)~~] Resource recovery--The recovery of material or energy from solid waste.

(135) [~~(129)~~] Resource recovery facility--A solid waste processing facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(136) [~~(130)~~] Rubbish--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

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

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

(139) [~~(133)~~] Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(140) [~~(134)~~] Saturated zone--That part of the earth's crust in which all voids are filled with water.

(141) [~~(135)~~] Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(142) [~~(136)~~] Scrap tire--Any tire that can no longer be used for its original intended purpose.

(143) [~~(137)~~] Seasonal high-water [~~high water~~] level--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a facility.

(144) [~~(138)~~] Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(145) [~~(139)~~] Site--Same as facility.

(146) [~~(140)~~] Site development plan--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(147) [~~(141)~~] Site operating plan--A document, prepared by the design engineer in collaboration with the facility operator, that provides general instruction to facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(148) [~~(142)~~] Site operator--The holder of, or the applicant for, an authorization (or license) for a municipal solid waste facility.

(149) [~~(143)~~] Sludge--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(150) [~~(144)~~] Small municipal solid waste landfill--A municipal solid waste landfill unit (Type IAE) at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average and/or a Type IVAE landfill unit at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average. A Type IAE landfill permit may include additional authorization for a separate Type IVAE landfill unit. If a permit contains dual authorization for Type IAE and Type IVAE landfill units, the permit must designate separate areas for the units and where all disposal cells will be located within each unit.

(151) [~~(145)~~] Solid waste--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; [~~or~~]

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is 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, as amended (42 United States Code (USC), §§6901 *et seq.)*; or[~~.~~]

(D) post-use polymers or recoverable feedstocks processed through pyrolysis or gasification that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 USC, §§6901 *et seq.).*

(152) [~~(146)~~] Solid waste management unit--A landfill, surface impoundment, waste pile, furnace, incinerator, kiln, injection well, container, drum, salt dome waste containment cavern, land treatment unit, tank, container storage area, or any other structure, vessel, appurtenance, or other improvement on land used to manage solid waste.

(153) [~~(147)~~] Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste (MSW), or transported in the same vehi-

cle as MSW, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(154) [~~(148)~~] Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household [~~Materials Which Could Be Classified as~~] Hazardous Wastes);

(B) Class 1 industrial nonhazardous waste;

(C) untreated medical waste;

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines.

(155) [~~(149)~~] Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations Part 257, Appendix II.

(156) [~~(150)~~] Storage--The keeping, holding, accumulating, or aggregating of solid waste for a temporary period, at the end of which the solid waste is processed, disposed, or stored elsewhere.

(A) Examples of storage facilities are collection points for:

(i) only nonputrescible source-separated recyclable material;

(ii) consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; and

(iii) accumulation of used or scrap tires prior to transportation to a processing or disposal facility.

(B) Storage includes operation of pre-collection or post-collection as follows:

(i) pre-collection--that storage by the generator, normally on his premises, prior to initial collection; or

(ii) post-collection--that storage by a transporter or processor, at a processing facility, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(157) [~~(151)~~] Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(158) [~~(152)~~] Structural components--Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(159) [~~(153)~~] Surface impoundment--A natural topographic depression, man-made excavation, or diked area formed

primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, and lagoons.

(160) [~~(154)~~] Surface water--Surface water as included in water in the state.

(161) [~~(155)~~] Tank--A stationary device, designed to contain an accumulation of solid waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(162) [~~(156)~~] Tank system--A solid waste storage or processing tank and its associated ancillary equipment and containment system.

(163) [~~(157)~~] Transfer station--A facility used for transferring solid waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(164) [~~(158)~~] Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other transportation vehicle used to contain solid waste being transported from one geographical area to another.

(165) [~~(159)~~] Transporter--A person that collects, conveys, or transports solid waste; does not include a person transporting his or her household waste.

(166) [~~(160)~~] Trash--Same as Rubbish.

(167) [~~(161)~~] Treatment--Same as Processing.

(168) [~~(162)~~] Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(169) [~~(163)~~] Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(170) [~~(164)~~] Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(171) [~~(165)~~] Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule):

(A) batteries, as described in 40 Code of Federal Regulations (CFR) §273.2;

(B) pesticides, as described in 40 CFR §273.3;

(C) thermostats, as described in 40 CFR §273.4;

(D) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(E) lamps, as described in 40 CFR §273.5.

(172) [~~(166)~~] Unloading areas--Areas designated for unloading, including all working faces, active disposal areas, storage areas, and other processing areas.

(173) [~~(167)~~] Unstable area--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(174) [~~(168)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(175) [~~(169)~~] Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(176) [~~(170)~~] Washout--The carrying away of solid waste by waters.

(177) [~~(171)~~] Waste acceptance hours--Those hours when waste is received from off-site.

(178) [~~(172)~~] Waste management unit boundary--A vertical surface located at the perimeter of the unit. This vertical surface extends down into the uppermost aquifer.

(179) [~~(173)~~] Waste-separation/intermediate-processing center--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(180) [~~(174)~~] Waste-separation/recycling facility--A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

(181) [~~(175)~~] Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(182) [~~(176)~~] Water table--The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(183) [~~(177)~~] Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(184) [~~(178)~~] Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(185) [~~(179)~~] White goods--Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(186) [~~(180)~~] Working face--Areas in a landfill where waste has been deposited for disposal but has not been covered.

(187) [~~(181)~~] Yard waste--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.

(a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual's own land and is not required to comply with §330.19 of this title (relating to Deed Recordation) provided that:

(1) the litter or waste is generated on land that the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land that the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and

(7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.

(b) A permit, registration, notification, or other authorization is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway rights-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway rights-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.171(c)(2) of this title (relating to Disposal of Special Wastes).

(c) A permit, registration, notification, or other authorization is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(d) Except as required by §330.7(c)(2) and §330.9(a) of this title (relating to Permit Required; and Registration Required), a permit, registration, notification, or other authorization is not required for transporters of municipal solid waste.

(e) A permit, registration, notification, or other authorization is not required for a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

(f) A permit, registration, notification, or other authorization is not required from a car wash facility for drying grit trap waste as long as these wastes are dried and disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to other property if the car wash facility and the property with the drying bed have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(g) A permit, registration, notification, or other authorization is not required for a gasification or pyrolysis facility. The owner or operator shall keep records onsite to demonstrate:

(1) that the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for subsequent beneficial use. The demonstration may consist of the following information:

(A) documentation to support all costs associated with processing materials versus the resale value for the intended beneficial use; or

(B) published indices or buyer contracts, proposed turnover rates, and calculations to show a resale value greater than the costs associated with processing materials.

(2) identification of the disposal site(s) authorized by the commission where all solid waste generated from converting the materials will be disposed of.

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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Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §330.59, §330.73

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out is duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105 (concern-

ing General Policy), which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under the Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA), §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; THSC, §361.0675, which requires the commission to increase the application fee for a permit or major permit amendment for an MSW landfill to $2,000; and THSC, §361.088, which requires the commission to confirm information included in an application for a permit or major permit amendment for an MSW landfill by performing a site assessment of the facility before the agency issues the authorization.

The proposed amendments implement THSC, §361.0675 and §361.088.

§330.59. Contents of Part I of the Application.

(a) General.

(1) Part I of the application consists of information that is required regardless of the type of facility involved. All items required by this section, §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits) and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.

(2) Submittal of Part I by itself will not necessarily require publication of a notice of intent to obtain a municipal solid waste (MSW) permit under the provisions of Texas Health and Safety Code (THSC), §361.0665, or a notice concerning receipt of a permit application under the provisions of THSC, §361.079.

(3) For a permit application, submittal of Part I only will not allow a permit application to be declared administratively complete under the provisions of THSC, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).

(b) Facility location. The owner or operator shall:

(1) provide a description of the location of the facility with respect to known or easily identifiable landmarks;

(2) detail the access routes from the nearest United States or state highway to the facility; and

(3) provide the longitudinal and latitudinal geographic coordinates of the facility.

(c) Maps.

(1) General. The maps submitted as a group shall show the elements contained in §305.45 of this title and the following:

(A) latitudes and longitudes; and

(B) the property boundary of the facility.

(2) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDOT). At least one general location map shall be at a scale of one-half inch equals one mile. If TxDOT publishes more detailed maps of the proposed facility area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.

(3) Land ownership map with accompanying landowners list.

(A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 1/4 mile of the facility, and all mineral interest ownership under the facility.

(B) The adjacent and potentially affected landowners' list shall be keyed to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 1/4 mile of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(d) Property owner information. Property owner information shall include the following:

(1) the legal description of the facility;

(A) the legal description of the property and the county, book, and page number or other generally accepted identifying reference of the current ownership record;

(B) for property that is platted, the county, book, and page number or other generally accepted identifying reference of the final plat record that includes the acreage encompassed in the application and a copy of the final plat, in addition to a written legal description;

(C) a boundary metes and bounds description of the facility signed and sealed by a registered professional land surveyor; and

(D) drawings of the boundary metes and bounds description; and

(2) a property owner affidavit signed by the owner that includes the following:

(A) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the facility;

(B) for facilities where waste will remain after closure, acknowledgment that the owner has a responsibility to file with the county deed records an affidavit to the public advising that the land will be used for a solid waste facility prior to the time that the facility actually begins operating as a municipal solid waste landfill facility, and to file a final recording upon completion of disposal operations and closure of the landfill units in accordance with §330.19 of this title (relating to Deed Recordation); and

(C) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance.

(e) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title. Normally, this shall be a one-page certificate of incorporation issued by the secretary of state. The owner or operator shall list all persons having over a 20% ownership in the proposed facility.

(f) Evidence of competency. Requirements for demonstrating evidence of competency are as follows.

(1) The owner or operator shall submit a list of all Texas solid waste sites that the owner or operator has owned or operated within the last ten years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(2) The owner or operator shall submit a list of all solid waste sites in all states, territories, or countries in which the owner or operator has a direct financial interest. The type of site shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(3) The executive director shall require that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(4) The names of the principals and supervisors of the owner's or operator's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(5) For landfill permit applications only, evidence of competency to operate the facility shall also include landfilling and earthmoving experience if applicable, and other pertinent experience, or licenses as described in Chapter 30 of this title possessed by key personnel, and the number and size of each type of equipment to be dedicated to facility operation.

(6) For mobile liquid waste processing units, the owner or operator shall submit a list of all solid waste, liquid waste, or mobile waste units that the owner or operator has owned or operated within the past five years. The owner or operator shall submit a list of any final enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government within the last five years relating to compliance with applicable legal requirements relating to the handling of solid or liquid waste under the jurisdiction of the commission or the United States Environmental Protection Agency. Applicable legal requirement means an environmental law, regulation, permit, order, consent decree, or other requirement.

(g) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(h) Application fees.

(1) In accordance with §305.53 of this title (relating to Application Fee), the application fee for a permit, or a major permit amendment as provided in §305.62(j)(1) of this title (relating to Amendments), for a municipal solid waste landfill is $2,050.

(2) [~~(1)~~] The [~~In accordance with §305.53 of this title (relating to Application Fee), the~~] application fee for a permit, registration, amendment, modification, or temporary authorization not specified in paragraph (1) of this subsection is $150.

(3) [~~(2)~~] For a development permit or registration over a closed municipal solid waste landfill, THSC, §361.532, requires the Texas Commission on Environmental Quality (TCEQ) to charge an application fee equal to the actual cost of reviewing the application prior to the issuance of a development permit. The owner or operator shall submit an initial application fee of $2,500 to be submitted in the form of a check or money order made payable to the TCEQ. Upon completion of the review process, including the public meeting, the executive director shall present the owner or operator with a refund for an overcharge, or an invoice for an undercharge.

§330.73. Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities.

(a) If at any time during the life of the facility the owner or operator becomes aware of any condition in the permit or registration that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the facility in compliance, the owner or operator shall submit to the executive director requested changes to the permit or registration in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and must be approved prior to their implementation.

(b) All drawings or other sheets prepared for requested revisions must be submitted following the format in §330.57(g) of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities). All revised engineering and geoscientific plans, drawings, and reports shall be signed and sealed by a licensed professional engineer or geoscientist as specified in §330.57(f) of this title.

(c) Before a permit, or a major permit amendment as provided in §305.62(j)(1) of this title, for a municipal solid waste (MSW) landfill is issued, the executive director shall perform a site assessment of the facility, as prescribed by the executive director, to confirm information included in the application.

(d) [~~(c)~~] A preconstruction conference shall be held prior to commencement of physical construction for an MSW [~~a municipal solid waste (MSW)~~] landfill facility, a vertical landfill expansion, or a lateral landfill expansion. The preconstruction conference shall not be held more than 90 days prior to the date that construction is scheduled to begin. All aspects of the permit, construction activities, and inspections shall be discussed. Additional preconstruction conferences may be held prior to the opening of a new MSW landfill unit. The executive director and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the facility manager, shall attend the preconstruction conference.

(e) [~~(d)~~] The owner or operator shall obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration or permit and in general compliance with the regulations prior to initial operation. The owner or operator shall maintain that certification on site for inspection.

(f) [~~(e)~~] After all initial construction activity has been completed and prior to accepting any solid waste, the owner or operator shall contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection shall be conducted by the executive director within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner or operator and the engineer.

(g) [~~(f)~~] The MSW facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit or registration and this chapter have been received and found to be acceptable, and that construction is in compliance with the permit or registration and the approved site development plan. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for acceptance of waste.

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 May 1, 2020.

TRD-202001756
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

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SUBCHAPTER F. ANALYTICAL QUALITY ASSURANCE AND QUALITY CONTROL

30 TAC §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, 330.289

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out is duties under the TWC; TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105 which authorize the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Solid Waste Disposal Act (TSWDA) §361.017 and §361.024, which provide the commission with the authority to adopt rules necessary to carry out its power and duties under the TSWDA; THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of MSW; and THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste.

The proposed repeals implement THSC, §§361.002, 361.011, and 361.024.

§330.261. Applicability and Purpose.
§330.263. Laboratory Analyses.
§330.265. Reporting Requirements.
§330.267. Records Control.
§330.269. Matrix Spikes and Matrix Spike Duplicates.
§330.271. Method Blanks.
§330.273. Laboratory Control Samples and Laboratory Control Sample Duplicates.
§330.275. Surrogates.
§330.277. Data Reduction, Evaluation, and Review.
§330.279. Matrix Interferences and Sample Dilutions.
§330.281. Chain of Custody.
§330.283. Sample Collection and Preparation.
§330.285. Analytical Method Detection Limits and Method Performance.
§330.287. Instrument and Equipment Calibration and Frequency.
§330.289. Laboratory Case Narrative.

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 May 1, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 239-1806

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.366

The Comptroller of Public Accounts proposes the repeal of §3.366, concerning internet access services. The comptroller repeals §3.366 to reflect federal adoption of the Internet Tax Freedom Act (ITFA) of 2016 which prohibits taxing of internet access.

ITFA included a grandfather clause for those state and local governments, including Texas, who imposed a tax on internet services prior to October 1, 1998. This clause allows Texas to collect tax on internet services until the clause expires on June 30, 2020.

The repeal of this section is effective July 1, 2020.

Tom Currah, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government. During the first five years that the proposed repeal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined the repeal would benefit the public by conforming with federal law. There would be no significant anticipated economic cost to the public. This repeal is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal 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.*

The repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal has no effect on any other statute.

§3.366. Internet Access Services.

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 April 28, 2020.

TRD-202001694

William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: June 14, 2020
For further information, please call: (512) 475-0387

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS

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

The amendments to §371.1603 and §371.1715 are adopted without changes to the proposed text as published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7576). These rules will not be republished.

BACKGROUND AND PURPOSE

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

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

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

COMMENTS

The 31-day comment period ended January 13, 2020. During this period, HHSC received comments regarding the proposed rules from the Texas Medical Association, the Texas Dental Association, the Texas Health Care Association, Superior HealthPlan, BakerHostetler, LLP, and In-Home Attendant Services. A summary of comments relating to the rules, and HHSC responses, follows.

Comment: One commenter agrees that the amended rule language in §371.1603 protects the due process of a person subject to agency regulation. The commenter also agrees with OIG that each case must be evaluated individually, allowing the person potentially subject to an enforcement action to submit mitigating factors for the agency's consideration during a contested case and during the agency's informal resolution process, as the agency evaluates violations, and scales resulting enforcement actions.

Response: OIG appreciates the supportive comment. No change was made in response to the comment.

Comment: Two commenters suggest changing the phrase "sole discretion" in §371.1603(c) to "reasonable discretion." One commenter believes this change is necessary to ensure that recipient and community needs are considered in connection with the determination of whether to grant an installment agreement. Further, one commenter suggests this change should occur to ensure that similarly situated providers are treated in a reasonably consistent manner.

Response: OIG regularly offers installment agreements when warranted by the facts. However, OIG considers this comment to be beyond the scope of the amendment. The language "[a]t OIG's sole discretion, overpayments may be collected in a lump sum or through installments" is an existing provision in the rule. OIG added the sentence to which the commenter referred as an accommodation to an informal commenter seeking to ensure that providers are aware of their opportunity to request installment agreements. The phrase "sole discretion" in the added sentence reiterates the existing provision in the first sentence of §371.1603(c). No change was made in response to this comment.

Comment: Two commenters recommend that the phrase "administrative penalties or both" in §371.1603(c) should be deleted. One commenter states that it is incongruous to subject a person to an administrative penalty for paying under the terms of an installment agreement when an installment agreement is not a basis for the imposition of an administrative penalty under the

Texas Administrative Code (TAC) rules that provide grounds for enforcement. The commenter further states that the imposition of administrative penalties for utilization of an installment agreement would result in the stacking of administrative penalties.

Response: The administrative penalties referenced in the rule are default penalties for failing to comply with the terms of an installment agreement. OIG reserves the right to use installment agreements and reserves the right to include default penalty provisions in the installment agreements in case a person fails to comply with the agreement. Default penalties only come into effect if the provider fails to comply with the terms of the installment agreement. Additionally, a provider is not required to accept an installment agreement that includes a provision for the assessment of penalties. OIG has authority, under Texas Human Resources Code §32.039(b)(3) and 1 TAC §371.1655(3) and (9), to assess a penalty for failing to repay overpayments after receiving notice of a delinquency or failing to comply with a settlement agreement. A provider's delinquency in making a payment required by a settlement agreement is a new ground for enforcement that exposes the provider to the risk of additional penalties. This is not stacking of penalties, but penalties assessed as a result of contract non-compliance. No change was made in response to this comment.

Comment: One commenter suggests establishing a specified rate of interest in connection with installment agreements, including using a provision similar to that set forth in 1 TAC §357.643, updated to refer to Texas Finance Code §304.102.

Response: OIG uses, in its current settlement agreement forms, the judgment rate referenced in Texas Finance Code §304.003 to calculate interest in connection with installment agreements. No change was made in response to this comment.

Comment: One commenter requests that OIG provide a citation for the underlying statutory authority that serves as the basis for the proposed amendment language regarding authorization of interest and/or penalties in §371.1603(c).

Response: OIG has authority under Texas Human Resources Code §32.039(b)(3) and 1 TAC §371.1655(3) and (9) to assess a penalty for failing to repay overpayments after receiving notice of a delinquency or failing to comply with a settlement agreement. Furthermore, a provider is not required to accept an installment agreement that includes a provision for the assessment of interest and/or administrative penalties. Unless prohibited by law, parties to a contract may mutually agree on remedies for default. A provider's delinquency in making a payment required by a settlement agreement is a new ground for enforcement that exposes the provider to the risk of additional penalties. No change was made in response to this comment.

Comment: One commenter requests that if the proposed amendment language in §371.1603(c) is adopted, the language should be amended to state that (1) the interest and/or penalties referenced are only for late or missed payments and (2) a good cause exception must be included in the settlement agreement.

Response: OIG routinely considers evidence of good cause submitted by a provider who is delinquent in making payments required by a settlement agreement. Every settlement agreement contains an amendment clause allowing amendment by mutual agreement. When warranted by the facts, OIG considers amendment of the settlement agreement to adjust the payment schedule. No change was made in response to this comment.

Comment: One commenter suggests that OIG adopt an approach similar to that used in federal regulation 42 CFR §405.371(b)(3), which addresses suspension of Medicare payments to providers and suppliers of services. Specifically, HHSC would establish an outside period of time at which point a case would be deemed to be closed under §371.1603(e), unless OIG took affirmative action to keep the case open.

Response: OIG did not propose any amendments to §371.1603(e), the subsection this comment concerns. The purpose of the amendments is to clarify the factors the agency considers when imposing and scaling enforcement actions as required under Texas Government Code §531.102(x), including appropriate mitigating factors, as well as to clarify that the agency assesses penalties in accordance with relevant law, particularly Texas Human Resources Code §32.039. HHSC did not propose to amend how long an OIG case remains open. Therefore, the commenter's suggested amendment is outside the scope of the proposed amendments. No change was made in response to this comment.

Comment: One commenter recommends that other factors be included in §371.1603(f) for determining the severity of a sanction, including (1) the presence or absence of a direct benefit to the person, (2) whether complicity in the violation is widespread throughout the provider organization, (3) the level of intent or culpability of the parties, (4) the degree of difficulty in detecting the particular type of offense, and (5) the lack of remedial steps taken by the person.

Response: The factors listed in §371.1603(f)(1) - (3) and (g) already allow OIG to consider factors such as those proposed by the commenter. No change was made in response to this comment.

Comment: One commenter asserts that the phrase "except as provided in other statute, rule, or regulation" in §371.1603(f) is vague and fails to give physicians and providers fair notice of when the listed factors will be considered versus when they will not. The commenter further recommends that the proposed rules specifically describe whether and when OIG will consider the factors listed in the proposed rules and that OIG clearly specify any exceptions in the rule proposal (preferably with applicable statutory/regulatory citations).

Response: The introductory phrase --"[e]xcept as provided in other statute, rule, or regulation"-- is included in the rule because other law exists that does not allow OIG to use discretion in determining the appropriate administrative action or sanction. For example, federal law (42 USC §1396a(a)(39)) and 1 TAC §371.1705 require OIG to exclude from Medicaid persons convicted of certain crimes. Federal regulation (42 CFR §455.416) requires the State Medicaid agency to terminate the enrollment of a provider under certain circumstances, such as being terminated from Medicare or Medicaid in another state. Further, because federal and state law is so expansive, it would be impracticable to list all laws that may restrict OIG's discretion in determining the appropriate sanction. No change was made in response to this comment.

Comment: One commenter requests that OIG clarify the meaning of the phrase "prevalence of errors" in §371.1603(f)(2) to make clear the context, what type of errors are being considered (clerical or medical), and whether the errors must be related to the alleged violation.

Response: The rule language was taken directly from Texas Government Code §531.102(x), which requires the adoption

of rules establishing criteria that include consideration of "the prevalence of errors by the provider." The statute does not limit the type of error that may be considered; therefore, OIG reserves the right to consider the prevalence of all types of errors committed by the provider in determining an appropriate administrative action or sanction. No change was made in response to this comment.

Comment: One commenter states that, with respect to harm "potentially resulting from [the] errors" as used in §371.1603(f)(3), OIG should establish a noncompliance matrix, based on the Severity Matrix used by CMS, to help assure that the potential errors are evaluated consistently. The commenter suggests that the matrix should focus on whether the harm potentially resulting from the noncompliance is isolated, part of a pattern, or a widespread occurrence, and on the severity of the harm.

Response: Texas Government Code §531.102(x) requires the adoption of rules establishing criteria that include consideration of "the financial or other harm to the state or recipients resulting or potentially resulting from those errors." A case-by-case approach in which OIG may consider all of the factors listed in §371.1603(f)(1) - (6), (g)(1) - (10), and (h)(1) - (7) allows for the most flexibility to consider all available facts. Additionally, the factors listed in §371.1603(f)(1) - (3) and (g) already allow OIG to consider factors such as those proposed by the commenter. The Severity Matrix used by CMS is a graphical representation of the assessment factors used to determine the severity and scope of the violations. Both of those concepts are factored into this rule along with many other factors prescribed by statute, recommended by stakeholders, and required to ensure appropriate actions under the circumstances. No change was made in response to this comment.

Comment: One commenter states that "potential harm" referenced in §371.1603(f)(3) is an unmeasurable standard, there is insufficient notice in the amended rule as to what type of actions would create potential harm, and that the inclusion of "potential harm" could have significant financial consequences to health plans and providers. The commenter urges HHSC to remove "potential" from the rule.

Response: Texas Government Code §531.102(x) requires the adoption of rules establishing criteria that include consideration of "the financial or other harm to the state or recipients resulting or *potentially* resulting from those errors" (emphasis added). No change was made in response to this comment.

Comment: One commenter states that the language "whether the person had previously committed a violation" in §371.1603(f)(4) could be interpreted as any violation within any given time, known or unknown and, therefore, should be changed to "whether the HHSC has made a prior finding of this violation."

Response: The language in §371.1603(f)(4) is identical to the language in Texas Human Resource Code §32.039(e)(2) that requires OIG to consider "whether the person had previously committed a violation" when OIG is determining the amount of penalty to be assessed for a violation of §32.039(b). No change was made in response to this comment.

Comment: One commenter states that the language in §371.1603(f)(4) and (6) is based on Texas Human Resource Code §32.039(e) and is specific to determining an amount of an administrative penalty for certain types of violations, but the proposed rule language would permit consideration of these factors in a broader context. The commenter further states that it is unaware of specific statutory authority that broadens the scope of the application of §32.039(e). Finally, the commenter recommends replacing §371.1603(f)(4) and (6) with the following language:

(f)(_) in determining the amount of a penalty to be assessed, if any, for a violation falling under Tex. Hum. Res. Code, Section 32.039(c)(2) and (e), the OIG shall consider:

(i) the seriousness of the violation;

(ii) whether the person had previously committed a violation; and

(iii) the amount necessary to deter the person from future violations.

Response: A state agency has authority expressly provided by statute or necessarily implied to carry out the express powers. Texas Government Code §531.102(x) requires the HHSC Executive Commissioner to "adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid agreement," and the statute does not limit the factors HHSC may consider. Additionally, proposed §371.1603(f)(6) is limited to the application of administrative penalties. Finally, OIG increases transparency by including in rule the factors OIG considers in determining the appropriate administrative action or sanction. No change was made in response to this comment.

Comment: One commenter recommends that proposed §371.1603(f)(6) should include appropriate objective factors guiding OIG on how to calculate this form of administrative penalty, and that penalties should conform to actual harm and other factors and not solely OIG's view of a deterrent amount. The commenter is also concerned about the application of an administrative penalty for an action that causes no harm but is subject to a fine under the sole guidance that OIG believes that a penalty of that size would be required to deter the person from committing a future violation.

Response: OIG does not calculate an administrative penalty solely on OIG's view of a deterrent amount. When making a preliminary determination regarding the appropriate amount of administrative penalties, OIG, as set out in §371.1603(f), must consider the six factors listed in §371.1603(f) and may consider any other relevant factors, including the twenty-one factors in §371.1603(g) and (h). Texas Human Resource Code §32.039(e)(2) requires, in determining the amount of penalty to pursue under subsection (c)(2), that OIG consider "the amount necessary to deter the person from committing future violations." Because the Legislature has required consideration of this factor, no change was made in response to this comment.

Comment: One commenter states that Texas Government Code §531.102(x) only mentions mitigating factors, not "aggravating" ones and so there is no authorization for the list of aggravating factors in §371.1603(g). The commenter recommends that the proposed §371.1603(g) (and the current aggravating factor list) be removed from the rule and that OIG should only rely on consideration of those factors listed under §371.1603(f). The commenter further states that many of the additional factors listed in §371.1603(g) are redundant with the considerations listed in §371.1603(f). The commenter states that the first five aggravating factors listed in §371.1603(g) relate to harm to patients and the public; but "financial or other harm to the state or recipients" is already listed as a main consideration under §371.1603(f). The commenter recommends that if OIG continues to list con-

sideration of additional factors in §371.1603(g), OIG should (i) remove criteria (g)(1) through (5) (since criteria (1) - (5) mention the type of harm caused by providers, which is already captured in the general consideration of "financial or other harm to the state or recipients" under §371.1603(f)(3)); and (ii) limit the consideration of previous disciplinary actions or violations to those related to the present violation (as reflected by OIG's proposed amendment language in proposed §371.1603(g)(9) and (g)(10)).

Response: The fact that Texas Government Code §531.102(x) does not contain the word "aggravating" does not mean that there is no authorization for consideration of a list of factors that are aggravating. Section 531.102(x) requires HHSC to adopt rules establishing criteria that include taking into consideration the three factors listed in (x)(1)(A) - (C). Those factors (seriousness of the violation, prevalence of errors, and harm resulting or potentially resulting), by their very nature, represent aggravating factors when present, or mitigating factors when absent. Additionally, the primary mandate in §531.102(x) is to adopt rules "establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement." Because the statute requires the adoption of rules establishing criteria that "include" consideration of certain factors, the criteria listed in the rule is not limited to the specific factors listed in §531.102(x)(1)(A) - (C) and not limited to mitigating factors. Several of the factors listed in §371.1603(g) are not amended by the proposed rule changes (e.g. (g)(2), (5) - (7)). Other factors listed in §371.1603(g) are more specific than those listed in (f) (e.g. (g)(1), (8), (9)). OIG has, in response to informal stakeholder comments, limited - as described in amended (g)(8) and (9) - consideration of previous disciplinary action or violations of board orders to those relevant to the violation(s) under consideration by OIG. No change was made in response to this comment.

Comment: One commenter states that the potential for harm is a standard that covers all conduct, whether appropriate or otherwise, that such a standard cannot be uniformly applied, and that an unknown amount of potential harm does not provide appropriate notice for persons to identify what level or type of potential harm would be a factor in assessing the amount of administrative damage or penalty.

Response: Texas Government Code §531.102(x) requires the adoption of rules establishing criteria that include consideration of "[t]he financial or other harm to the state or recipients resulting or *potentially* resulting from those errors" (emphasis added). No change was made in response to this comment.

Comment: One commenter states that striking severity of economic harm done to a patient essentially leaves an ambiguous measurement of economic harm and leaves an abundance of discretion on behalf of OIG to assess harm to a patient. The commenter suggests that the word severity remain in the rule.

Response: Pursuant to §371.1603(g), when determining the seriousness, harm or potential harm of the violation, OIG may consider the physical, emotional, or economic harm to one or more patients/individuals. In OIG's view, considering the degree of the harm includes considering the severity of the harm. No change was made in response to this comment.

Comment: One commenter states that the use of the term "relevant" in §371.1603(g)(8) and (9) is confusing and should be replaced with "substantially the same as." The commenter states further that the previous licensure action should be final action of any board review.

Response: In response to informal stakeholder comments, OIG added language to §371.1603(g)(8) and (9) to narrow OIG's consideration of previous disciplinary action and violation of previous orders. OIG disagrees that the term "relevant" is confusing. The language "previous disciplinary action by a licensing board" is an existing provision in the current rule and is outside the scope of the proposed amendments. Additionally, licensing board disciplinary actions are often resolved through informal processes such as warning letters or settlement agreements. OIG reserves the right to consider a licensing board's previous disciplinary action in whatever form the various licensing boards utilize and agrees that mere allegations filed with a licensing board would not be sufficient. If a person disagrees with the finality of the licensing board's action or the weight OIG should give the action, a party may address these matters in discussions with OIG or in a contested case, if necessary. No change was made in response to this comment.

Comment: One commenter states that §371.1603(g)(8) and (9) are redundant in that licensing board disciplinary actions in (g)(8) are imposed for licensing board violations in (g)(9). The commenter states that these two sections should be combined to avoid unreasonable stacking or amplification of penalties.

Response: A disciplinary action taken by a licensing board may result in a board order imposing certain affirmative conditions or restrictions. As such, a violation of the board's order may constitute a new act or omission-- that may or may not result in board disciplinary action-- worthy of consideration when determining the appropriate sanction or penalty. No change was made in response to this comment.

Comment: One commenter states that the phrase "may consider" in §371.1603(h) should be changed to "shall consider." The commenter states that if OIG is aware of a mitigating factor, it should be considered. Another commenter requests that OIG clarify that it will consider all applicable mitigating evidence, regardless of its source, and will notify physicians and providers of the opportunity to present mitigating evidence.

Response: As provided in §371.1603(f), OIG must take into consideration any mitigating factors --regardless of source-- when making a preliminary determination of the appropriate administrative action or sanction. Section 371.1603(h) lists items that may be considered as mitigating factors. If the facts of a particular case support any of the items listed in (h), and OIG determines that such facts are mitigating, OIG must take such facts into consideration as required in (f). OIG notes that if a person disagrees with or wishes to dispute the proposed administrative action or sanction, the person may decline to sign a settlement agreement offered by OIG and has a right to request and have a hearing. OIG considers the rule language to be the vehicle by which OIG provides notice that providers have the burden to present mitigating evidence to OIG. No change was made in response to this comment.

Comment: One commenter recommends that OIG add two mitigating factors to §371.1603(h): (1) whether the physician or provider had implemented procedures or safeguards to prevent the violation; and (2) the provider's lack of prior record.

Response: OIG believes the factors listed in §371.1603(h), as amended, particularly (h)(2), (6), and (7), and (f)(4), provide sufficient opportunity for OIG to consider the mitigating factors proposed by the commenter. No change was made in response to this comment.

Comment: One commenter agrees that the amended rule language protects the due process of a person subject to agency regulation and agrees with OIG that each case must be evaluated individually.

Response: OIG appreciates the supportive comment. No change was made in response to the comment.

Comment: One commenter states that Texas Human Resource Code §32.039 is limited in its application to certain violations specifically listed in that statutory provision (e.g., certain anti-kickback violations, false claims violations, and managed care organization violations). The commenter further states that OIG's proposed amendment language in §371.1715 appears to extend the application of Texas Human Resource Code §32.039 to other types of violations. The commenter requested more information on the statutory language authorizing the amendments proposed in §371.1715.

Response: The language added to §371.1715(a) is taken directly from Texas Government Code §531.102(h)(1). No change was made in response to the comment.

Comment: One commenter states that the proposed change in §371.1715(a) greatly expands the scope clearly identified by the Legislature as it relates to OIG and would permit OIG to take any administrative penalty that has been granted to any health and human services agency, rather than the prescribed penalties authorized by Texas Human Resource Code §32.039.

Response: The language added to subsection (a) is taken directly from Texas Government Code §531.102(h)(1). No change was made in response to the comment.

Comment: One commenter submits questions, comments, concerns and suggested solutions related to Financial Management Services Agencies.

Response: This comment does not specifically address any particular proposed amendment to §371.1603 or §371.1715, therefore, OIG considers this comment to be beyond the scope of the proposed amendments. No change was made in response to this comment.

DIVISION 1. GENERAL PROVISIONS

1 TAC §371.1603

STATUTORY AUTHORITY

The amendments are authorized 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; Texas Government Code §531.102(a), which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the HHSC Executive Commissioner, in consultation with OIG, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e), which provides HHSC with the authority to adopt rules necessary to implement that section; and Texas Human Resources Code §32.039, which provides HHSC with the authority to assess administrative penalties and damages and provides due process for persons potentially subject to more damages and penalties.

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 April 30, 2020.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: December 13, 2019
For further information, please call: (512) 491-4058

DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

1 TAC §371.1715

STATUTORY AUTHORITY

The amendments are authorized 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; Texas Government Code §531.102(a), which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the HHSC Executive Commissioner, in consultation with OIG, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e), which provides HHSC with the authority to adopt rules necessary to implement that section; and Texas Human Resources Code §32.039, which provides HHSC with the authority to assess administrative penalties and damages and provides due process for persons potentially subject to more damages and penalties.

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 Health and Human Services Commission
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.112, relating to registration of brokers, and new 16 TAC §25.486, relating to customer protections for brokerage services with changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7274). The rules will be republished. These rules will implement the requirements of Public Utility Regulatory Act (PURA) §39.3555 enacted as Senate Bill 1497 by the 86th Texas Legislature, Regular Session, and effective on September 1, 2019. These new sections are adopted under Project Number 49794.

The commission received comments on the proposed new sections from John Turala; Bottom Line Energy; Electricity Ratings, LLC; Oncor Electric Delivery Company LLC; Office of Public Utility Counsel (OPUC); Energy Ogre; RES Nation LLC; Alliance for Retail Markets (ARM); J. Pollock, Inc; Power Wizard, LLC; Texas Energy Association for Marketers (TEAM); Calpine Retail; The Energy Professionals Association (TEPA); and Brasovan Group LLC. The commission received reply comments on the proposed new sections from Energy Ogre; Enel X North America Inc; Power Wizard; CenterPoint Energy, Inc.; ARM; TEAM; AEP Energy, Inc.; OPUC; Calpine Retail; TEPA, and Patriot Energy Group, Inc and EMEX, LLC (collectively, EMEX/Patriot).

General Application of Aggregator Requirements to Brokers

OPUC, ARM, and Calpine each argued that the legislative intent behind PURA §39.3555 (for consistency, commenter references to Senate Bill 1497 are summarized as referencing PURA §39.3555) is for the commission to regulate brokers in a similar fashion as it regulates aggregators. Each of these three commenters pointed to the *2019 Scope of Competition Report in Electric Markets in Texas: Report to the 86th Legislature,* in which the commission recommended that "the Legislature require retail electric brokers to register with the Commission in a manner similar to retail electric aggregators to ensure that customers who use a retail electric broker have adequate customer protections." ARM and OPUC each also referenced versions of the author's statement of intent for PURA §39.3555, which each described the bill as creating the same registration standard for brokers as currently applies to aggregators.

With regard to broker registration requirements, OPUC argued that the legislative history indicates that the commission should apply the same registration requirements to brokers as currently apply to aggregators. ARM, on the other hand, pointed to additional legislative intent that was read into the record by State Representatives Tan Parker and Jim Murphy that indicated that registration should require only basic information about brokers and not require disclosure of any of their "secret sauce" with regard to how they operate their business. ARM interpreted the legislative history of PURA §39.3555 as evidencing the Legislature's intent to treat "brokers 'the same' as aggregators for customer protection purposes while minimizing any administrative or financial burden associated with registration."

In reply comments, TEPA argued that the application of aggregator requirements to brokers is not provided for by the preexisting provisions of PURA or the new provisions contained in PURA §39.3555. TEPA further argues that PURA §39.001 provides the commission with specific directives including that "electric services and their prices should be determined by customer choices and the normal forces of competition" as provided by PURA §39.001(a); that regulatory authorities may not make rules or issue orders regulating competitive electric services, prices, or competitors or restricting or conditioning competition" as provided by PURA §39.001(c); and that regulatory authorities must "order competitive rather than regulatory methods...to the greatest extent feasible" as provided by PURA §39.001(d).

TEPA argued that PURA clearly intends that brokers be regulated differently than aggregators. TEPA points to a number of differences between PURA §39.3555 and the "more extensive provisions for aggregators enacted in the original provisions of Chapter 39." TEPA also noted that PURA §§39.353 (a), (b), (d), (e), (g), (h); and 39.3535, 39.354, 39.3545, 39.356, and 39.357 all apply to aggregators and not brokers, providing more evidence in support of treating the two entity types differently.

Commission Response

The adopted rules are intended to provide a straightforward registration process together with the customer protections that are appropriate for brokers. The adopted rules are necessarily informed by the commission's experience with other competitive entities, such as aggregators, but the provisions in these rules are tailored to the provision of brokerage services and the requirements of PURA §39.3555. The commission declines to make changes based upon these general comments. The commission will respond to specific requests to adopt rules for brokers that are similar to rules that currently apply to aggregators in the appropriate sections below.

General Comments on 16 TAC §25.112

Comments Addressing Interim Registration

Beginning August 8, 2019, the commission accepted interim registrations from brokers to implement the new registration requirement pending development of a new rule. Brokers that submitted completed interim registration forms were assigned an interim registration number. ARM and TEAM each recommended that the commission require brokers with interim registrations to reregister using the commission's new registration form by July 1, 2020. TEAM and ARM further recommended that brokers with interim registrations be allowed to continue providing brokerage services until September 1, 2020, with the caveat that operating under an interim registration during this period does not constitute an exemption from the commission's customer protection rules. OPUC agreed that brokers with interim registrations should be required to reregister.

Commission Response

The commission declines to require brokers with interim registrations to reregister because doing so would impose an unnecessary burden on brokers and commission staff. The registration requirements included in new 16 TAC §25.112 are not materially different from the requirements that were in place when the interim registrations occurred. Upon final adoption of new 16 TAC §25.112, all brokers with interim registrations will be considered fully registered, and commission staff will update commission records to indicate such. Accordingly, the commission also declines to add language clarifying that the commission's customer protection rules apply to brokers with interim registrations, because these brokers will be fully registered upon final adoption of this rule. Moreover, the commission's customer protection rules apply to all brokers, regardless of their registration status.

Comments on 16 TAC §25.112(a)

Reliance on Broker Registration Number

ARM requested that retail electric providers (REPs) be allowed to rely upon a broker's provision of its broker registration number as evidence of registration. ARM argued such a process would be less burdensome than requiring the REP to check the list on the commission's website to confirm a broker's registration status. TEAM and Calpine Retail supported this request in reply comments.

OPUC opposed this request in reply comments. OPUC argued the broker registration number alone would not allow the REP to determine if the registration has been suspended, withdrawn, or expired. OPUC suggested, as an alternative to maintaining the proposed language, that if the commission decided to allow REPs to rely upon the registration number provided by the broker to verify the broker's registration status, that the commission require REPs to rely upon the publicly available list of registered brokers posted on the commission's website and the broker registration number provided to the REP by the broker.

In reply comments, TEPA argued that REPs are permitted to require broker registrations numbers in their agreements with brokers. It also asserted that it could not cite any possible prohibition of this practice, finding no provision in PURA §39.3555 that provides the commission a statutory basis to regulate discretionary competitive agreements between REPs and brokers.

Commission Response

The commission declines to modify the rule to allow REPs to rely solely upon a registration number provided by a broker to determine that broker's registration status. While relying on the broker's representation might be less burdensome on REPs, the commission agrees with OPUC that this approach would not ensure that the broker's registration is valid. REPs are not required to use the list provided by the commission. The list is intended to assist REPs in complying with the statutory prohibition against knowingly providing bids and offers to unregistered brokers. The commission also agrees with TEPA that nothing in this rule prohibits a REP from requiring a broker to provide its registration number before agreeing to provide that broker with bids or offers.

Replace "bids and offers" with "prices for retail electric products or services"

Under 16 TAC §25.112(a), a REP must not knowingly provide bids or offers to a person who provides brokerage services in this state for compensation or other consideration and is not registered as a broker. Power Wizard suggested that the words "bids and offers" be replaced with "prices for retail electric products or services" to more accurately reflect interactions between REPs and retail electric brokers. TEAM opposed Power Wizard's proposal, stating that existing language tracks the statute. TEAM also noted that the use of those terms would introduce confusion because 16 TAC §§25.474 (relating to Selection of Retail Electric Provider) and 25.475 (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers) already impose obligations on REPs regarding retail electric products and services.

Commission Response

The commission declines to replace "bids and offers" with "prices for retail electric products or services," as suggested by Power Wizard. The commission agrees with TEAM that "bids and offers" tracks the language of the statute. PURA §39.3555 defines brokerage services very broadly, which reflects the diverse array of interactions among brokers, clients, and REPs. Power Wizard's proposed change would narrow the scope of REP and broker interactions that are subject to the statutory requirement for REPs to do business only with registered brokers.

Brasovan asserted that some registered brokers might attempt to contract with unregistered third-party contractors to skirt the requirements of this section. Brasovan suggested that either the commission require any individual that is not an employee of a registered company or sole proprietor to register, or the commission require the registered entity through which the pricing was obtained be fully liable for any agents that work through them.

Commission Response

The commission agrees with Brasovan that a registered broker cannot avoid the commission's rules by contracting with a third party. If a registered broker outsources any component of the provision of brokerage services to a subcontractor, agent, or any other entity, the broker remains accountable under applicable laws and commission rules for any activity conducted on its behalf by the third-party entity. The commission adds language to clarify this point.

Broker responsibility for subcontractors or agents

Comments made regarding broker responsibility for subcontractor or agents were raised in response to rule sections other than 16 TAC §25.112. Specifically, ARM recommended adding a provision to proposed 16 TAC §25.486(d) holding a broker responsible for its representations to customers and applicants by employees or other agents of the broker concerning brokerage or retail electric service that are made through advertising, marketing, or other means. TEAM supported this proposal in reply comments.

Commission Response

The commission generally agrees with ARM's comments but finds that the recommended provision is more appropriately added to 16 TAC §25.112(a) and has amended that rule accordingly.

Comments on 16 TAC §25.112(b)

J. Pollock requested that the commission adopt a definition of "consulting services" and clarify that consulting services are not

brokerage services. J. Pollock argued that there is a fundamental difference between brokers and consultants. A broker, according to J. Pollock, is a person or firm who arranges transactions between a buyer and a seller for a commission paid when the deal is executed. By contrast, a consultant focuses on meeting the client's needs and collects a fee that is independent of the client's electricity usage or the details of the client's retail electric contract. J. Pollock further argued that defining brokers to include consultants would have the unintended consequence of requiring legal counsel that reviews contract terms and conditions to register as a broker. J. Pollock requested that if the commission adopts the proposal for publication, it clarify that legal advisors must register as brokers.

In reply comments, Calpine Retail agreed that the commission should consider adopting a definition of consulting services and stated that consulting services are clearly different from brokerage services.

TEAM, TEPA, ARM, and Power Wizard opposed adding a definition of consulting services. These parties argued that excluding consulting services from the definition of brokerage services would be inconsistent with the plain language of PURA §39.3555, which defines brokerage services broadly to include persons who provide "advice or procurement services to...a retail electric customer regarding the selection of a [REP], or the products or services offered by a [REP]". ARM indicated that J. Pollock's proposal would create a loophole, allowing persons providing brokerage services to avoid registering as brokers and complying with the customer protection requirements of PURA and the commission's rules. Power Wizard explained that legal advice related to the terms and conditions of a contract for the purchase of retail electric service is easily distinguishable from providing advice or procurement services regarding the selection of a REP.

Commission Response

The commission declines to include a definition of "consulting services." The commission agrees that adopting a definition of consulting services would exclude from the registration requirement consultants who are engaging in activities within the statutory definition of "brokerage services." Doing so would be inconsistent with the plain language of PURA §39.3555. The Legislature's inclusion of the term "advice" makes it clear that brokers are not limited to persons or firms who arrange transactions between buyers and sellers for a commission when a deal is executed, as suggested by J. Pollock. The commission agrees with Power Wizard that other types of advice, such as legal, financial, regulatory, or energy management, are distinguishable from advice regarding the selection of a retail electric product, service, or provider.

Comments on 16 TAC §25.112(b)(2)

TEPA suggested that the definition of brokerage services specify that the services must be offered for compensation or other consideration to prevent friendly advice from neighbors being construed as brokerage services. TEAM opposed this suggestion in reply comments. TEAM argued that this was not in line with the statutory definition of brokerage services and could create unintended regulatory gaps.

Commission Response

The commission declines to change the definition of brokerage services in response to these comments. The commission agrees with TEAM that deviating from the statutory definition of brokerage services could create unintended regulatory gaps. The requirement to register with the commission and many of the other provisions of 16 TAC §§25.112 and 25.486 do not apply unless the broker is receiving some form of compensation or is entering into a written agreement with a client. To address the few remaining scenarios in which an interaction between neighbors could be construed under the statute as the provision of brokerage services, the commission will rely on enforcement discretion to avoid unintended enforcement outcomes.

Comments on 16 TAC §25.112(c)

Type of Customer Registration Requirement

ARM commented that registrants should be required to state the types of customers to whom they intend to provide brokerage services. ARM argued this is required to achieve consistency with the interim form. In reply comments, ARM noted that this information would assist commission staff in their review of a registration application from a potential broker. TEAM supported this in its reply because it is not overly burdensome, is required of other market participants, and may be helpful to the commission in better understanding each broker's role in the marketplace.

TEPA opposed requiring registrants to specify the types of customers to whom the registrant intends to provide brokerage services. TEPA argued that the type of customers a broker serves may change after its initial registration, requiring frequent updates.

Commission Response

The commission declines to require a registrant to specify the types of customers to whom it intends to provide brokerage services. Doing so is not necessary to evaluate broker registration applications. The commission will update the registration form, as necessary, to resolve any inconsistencies with the rules.

Affiliate Disclosure Registration Requirement

TEAM, ARM, TEPA and OPUC each proposed a requirement that brokers disclose certain affiliates as part of the registration process. Power Wizard also indicated, in reply comments, that it supported affiliate disclosure when potentially useful or beneficial to customers.

TEPA recommended that affiliate relationships between brokers and REPs should be required to be disclosed as part of the broker registration process. TEPA argued that the premise of broker registration is that consumers need transparent, reliable information about various market participants to make an informed decision about competitive choices for electricity. TEPA continued that if the consumer is not provided accurate and complete information, consumer confidence will be undermined, and the value of brokerage services will be diminished in the marketplace.

TEAM suggested requiring brokers to provide the names of both the affiliates and subsidiaries of the registering party who are registered or certified by the commission. ARM suggested a similar disclosure requirement, advocating for the disclosure of relationships with all customer-facing competitive entities. ARM asked that the name of any REP, aggregator, electric utility, or other broker that is an affiliate of the broker be included.

Power Wizard opposed TEAM's initial suggestion in reply comments, arguing that many entities that must register with the commission, such as registered power generators or certified re-

newable energy credit generators, are unlikely to be relevant to retail electric consumers. Power Wizard suggested limiting disclosure to those affiliates that are public facing entities. Calpine Retail supported ARM's proposal in reply comments. In reply comments, ARM and TEAM submitted a harmonized proposal requiring disclosure of the name of any REP, aggregator, electric utility, or other broker that is an affiliate or subsidiary of the registrant.

OPUC proposed adding affiliate disclosure requirements by applying the aggregator affiliate disclosure requirements of 16 TAC §§25.111(f)(1)(J)-(L) (relating to Registration of Aggregators) to brokers. Under these provisions, a registrant would be required to disclose: the names of the affiliates and subsidiaries, if any, of the registering party that provide utility-related services (such as telecommunications, electric, gas, water, or cable service); any affiliate or agency relationships and the nature of any affiliate or agency agreements with REPs or transmission and distribution utilities, and an explanation of plans to disclose its agency relationships with REPs to customers and REPs with whom it does business; and, a list of other states, if any, in which the registering party and registering party's affiliates and subsidiaries that provide utility-related services currently conduct or previously conducted business. In reply comments, OPUC indicated that it preferred broader disclosure requirements but also supported the proposals of TEAM and ARM.

TEAM noted in reply comments that requiring disclosure of some items recommended by OPUC would impose additional burdens on brokers with limited benefit toward achieving transparency and preventing customer confusion. Specifically, TEAM questioned the value of requiring the disclosure of affiliates that provide utility-related services like cable service or requiring explanations of a broker's plans to disclose its affiliate relationships to customers. TEAM also noted, however, that OPUC's proposed subsections would not impose an anomalous burden on brokers, as they replicate existing registration requirements for aggregators. ARM opposed OPUC's recommendation regarding the disclosure of agency relationships with REPs, arguing that brokers are never agents of REPs and so a disclosure of agency agreements would always yield a null result.

Commission Response

The commission declines to require affiliate disclosure as part of the registration process, as requested by TEAM, ARM, TEPA, and OPUC. Commission staff does not need information about a registrant's affiliates to process its registration application because there are no prohibitions against these affiliations. If commission staff needs this information as part of an investigation or complaint proceeding, commission staff can request it at that time.

The commission intends for broker registration to be a simple process. While clients may benefit from transparency regarding potential conflicts of interest between brokers and other regulated entities, this can be accomplished without requiring disclosure at the time of registration.

Clients will have access to some affiliate information as part of the mandatory disclosures a broker must make prior to the initiation of brokerage services under 16 TAC §25.486, the specifics of which are described as part of the commission's response to comments filed concerning that section. This access provides clients with relevant affiliate information that is up to date when the client is faced with the decision of whether to work with a particular broker. Moreover, if a client is interested in a broker's other affiliates, or any other information, it can request that information from the broker.

OPUC's Requested Registration Disclosures

OPUC described the registration requirements in the proposed rule as collecting only the names and contact information of entities providing brokerage services to residential and small commercial customers. OPUC urged that more information should be required in the broker registration process, because these entities will directly engage with consumers in offering their brokerage services. OPUC recommended that the commission strengthen the customer protections in the proposed rule to conform with the intent of PURA §39.3555. OPUC continued that applying the same registration requirements as currently apply to aggregators would be appropriate. Specifically, OPUC advocated for the application of 16 TAC §§25.111(f)(1)(H)-(Q) to brokers. OPUC's suggestions regarding 16 TAC §§25.111(f)(1)(J)-(L) are addressed separately above in the context of adding affiliate disclosure requirements to the registration requirements.

The specific requirements recommended by OPUC address delinquency with taxing authorities; prior retail electric experience; anticipated sources of compensation and the broker's plan for disclosing that compensation to customers; history of bankruptcy; prior convictions of an officer, director or principal; known active customer protection investigations; and complaint history.

In reply comments, TEAM stated generally that it was not opposed to OPUC's proposed additions, which would require several disclosures related to protecting customers and protecting against fraud. TEAM also generally supported the concept of compensation disclosure requirements. It argued that any compensation disclosure required during registration should complement the compensation disclosure required to a broker's clients in 16 TAC §25.486(f).

TEPA, Enel X, and Power Wizard each opposed OPUC's broad application of aggregator rules to the broker registration process. TEPA argued that no provisions of law have been identified to support these suggestions. Enel X submitted that the proposed rule strikes a good balance on the amount of information brokers are required to submit with their applications. Enel X opposed suggestions by OPUC and others to increase the regulatory burden of the application process, finding OPUC's suggestions more in line with full licensing, rather than mere registration. Power Wizard argued that the fact that consumers engage directly with brokers does not alone necessitate the additional disclosures, as OPUC argued. The disclosure requirements in the proposed rule demonstrate the commission's recognition of the different levels of risk that consumers face when engaging the services of a REP, an aggregator, or a broker, and the proposed rule provides an appropriate level of disclosure in light of the lower level of consumer risk associated with the use of brokerage services by consumers.

Commission Response

The commission declines to adopt disclosure requirements for brokers similar to those found in 16 TAC §§25.111(f)(1)(H), (I), and (M)-(Q). The commission agrees with Enel X and Power Wizard that the additional disclosures requested by OPUC would be overly burdensome for registrants. None of the information that any of the suggested provisions would produce is required for com-

mission staff to evaluate a broker registration application. If the commission staff needs any of this information in the future to assess whether a broker has violated a commission rule, it can request the information at that time.

Comments on 16 TAC §25.112(c)(1)

Increased Database Functionality

TEPA requested the commission expand the search function of the database to allow for "doing business as" (commonly referred to as "dba") searches. Alternatively, it suggested the commission could require a streamlined registration or sub-registration for all allowable names used by the broker to market or offer brokerage services.

Commission Response

The commission declines to include language related to the search function of the broker database. Putting specific database requirements into rules may limit commission staff's ability to make improvements or necessary modifications to the database in the future without amending the rule.

With regard to the suggestion that the commission require sub-registration for all allowable names used by the broker to market or offer brokerage services, registrants are required to provide all business names of the registrant, limited to five business names. The commission interprets business names to include any assumed names that a broker uses when conducting its business.

Broker Naming Restrictions; Utility Cobranding

TEAM, ARM, OPUC, and Power Wizard argued that the rules should prohibit cobranding with a transmission and distribution utility (TDU), including its affiliates. TEAM highlighted that the commission has prevented REPs from cobranding with a TDU and that this prohibition has been upheld by the Third Circuit Court of Appeals. TEAM was concerned that cobranding would suggest a broker can improve the service a client receives from its TDU affiliate and lead to the subsidization of a competitive affiliate by a regulated entity. ARM recommended language prohibiting broker names from being, among other things, contrary to 16 TAC §25.272 (relating to Code of Conduct for Electric Utilities and Their Affiliates). TEAM and ARM harmonized their proposals in reply comments and suggested that business names may not be duplicative in whole or in part of the brand or business name of a TDU.

In reply comments, OPUC and Power Wizard both agreed with preventing TDU cobranding on the grounds that such a practice would be confusing or misleading, deceptive, or duplicative. Enel X requested a clarification be made that only TDUs located "in this state" are of concern. Enel X argued that it does not raise the same policy concerns when a broker is part of a corporate family that owns transmission assets outside of Texas.

CenterPoint Energy and AEP Energy opposed including a prohibition on brokers cobranding with TDUs. CenterPoint Energy argued that utility affiliate branding restrictions do not apply to aggregators and, moreover, go beyond the language of PURA §39.3555. These naming restrictions would significantly disrupt the lawful business activities of competitive entities that have provided brokerage services for years. CenterPoint Energy used the example of TrueCost, a web-based platform, which has been associated with the CenterPoint Energy name and brand since 2012. CenterPoint Energy argued that cobranding does not harm customers, undermine customer confidence in shopping for electricity, or cause undue customer confusion. Additionally, CenterPoint Energy cited Docket No. 40636, *Petition for Declaratory Ruling Regarding CenterPoint Energy Houston Electric, LLC Joint Advertising With a Competitive Affiliate,* as evidence the issue has already been litigated. In that matter, the commission found insufficient evidentiary support for the claims made by TEAM or ARM.

AEP Energy argued that a prohibition on cobranding was unnecessary, citing numerous statutory protections that apply to broker registrants and their use of names. PURA §39.157(d)(6) prohibits a utility from conducting joint advertising or promotional activities with a competitive affiliate (such as a broker) that may favor the competitive affiliate. AEP Energy highlighted that ARM acknowledged in initial comments that this language had already been used by the commission to deny a utility-affiliated REP certification to sell electric service to residential customers in Docket No. 39509, *Application of AEP Texas Commercial & Industrial Retail Limited Partnership for Amendment to a Retail Electric Provider Certification.* AEP Energy noted that though this was a fact-specific decision, the commission pointed out that neither PURA nor commission rules categorically prohibited a utility and its competitive affiliates from sharing the same or similar names. The broker rule should, similarly, not set out a blanket restriction. AEP Energy argued that there is nothing about the nature of brokerage services to distinguish them from these other affiliates. Additionally, AEP Energy pointed to PURA §§17.004(a)(1) and 39.101(b)(6), which already protect customers from unfair, misleading, or deceptive practices. AEP Energy further argued that the proposed rules 16 TAC §§25.486(d)(1) and 25.112(g)(2) also protect customers from fraudulent communications and make these offenses significant violations.

AEP Energy also made policy arguments against the limitation of business names in this context. AEP Energy believes that a customer using brokerage services is more sophisticated, better understands how the market works, and is unlikely to be misled or confused about who is providing the service. Further, AEP Energy stated its intention to offer brokerage services only to commercial and industrial customers. In these contexts, AEP Energy believed the concerns raised by TEAM and ARM are inapplicable, and that the commission implicitly recognized this difference when it denied certification to a utility-affiliated REP to sell electric service to residential customers based on this purported confusion but continued to allow the REP to sell electric service to commercial and industrial customers.

Commission Response

The commission declines to add a provision prohibiting a broker from cobranding with a TDU, as requested by ARM and TEAM. The commission agrees with AEP Energy that neither PURA nor commission rules prohibit a utility and its competitive affiliates from sharing the same or similar names. The relationship between brokers and TDUs does not justify adopting a different approach. Power Wizard's and OPUC's concern about customer confusion is addressed by the prohibition on misleading, fraudulent, unfair, deceptive, or anti-competitive communications in 16 TAC §25.486(d). TEAM's concern that cobranding would lead to cross-subsidization between a TDU and a competitive affiliate is addressed by the restrictions on joint marketing contained in 16 TAC §25.272. Ultimately, a blanket prohibition on cobranding between a utility and

a broker is not necessary to provide adequate customer protections for clients receiving brokerage services.

Broker Naming Restrictions; Deceptive, Misleading, Vague, or Duplicative

TEAM and ARM supported a prohibition on branding that is misleading, deceptive or duplicative with an existing REP, broker, or aggregator. The risk of confusion regarding the business name or brand of a broker is greater because brokers will now be able to identify themselves as officially registered with the commission. TEAM argued that secretary of state review is insufficient and only verifies whether names are distinguishable from other registered names.

TEAM suggested language prohibiting business names that are deceptive, misleading, vague, or duplicative of a name previously approved for use by another broker, aggregator, or REP not affiliated with the registrant. ARM presented similar language, and in reply, the two groups harmonized their proposals and suggested language limiting the registrant to five business names that are not deceptive, misleading, vague, or otherwise contrary to 16 TAC §25.272 or duplicative of a name previously approved for use by a REP, aggregator, or another broker that is not affiliated with the registrant.

Commission Response

The commission declines to include a provision in the adopted rule that expressly prohibits broker names that are misleading, deceptive or duplicative of other registered entities because it is unnecessary. The broker industry has been functioning for more than a decade and the commission is aware of only a few anecdotal examples of brokers attempting to use misleading names.

Brokers and consultants exist in many industries that do not have naming restrictions beyond secretary of state registration. REPs that are concerned with their intellectual property being violated have other remedies available. Similarly, if a broker is misleading customers through the use of branding, the prohibited communications provisions of 16 TAC §25.486 would apply.

Broker Naming Restrictions; PowerToChoose.org

TEAM commented that the rules should prevent broker names or web addresses from being duplicative with PowerToChoose.org. It suggested language requiring that business names and web addresses may not be deceptive, misleading, vague, or duplicative of the PowerToChoose.org website.

ARM replied that some of TEAM's language is duplicative of the general prohibition in the proposed rule against misleading, fraudulent, unfair, deceptive, or anti-competitive communications. Further, PURA protects customers from misleading and deceptive conduct and the REP and aggregator rules include this.

Commission Response

The commission declines to add language prohibiting names that are duplicative of PowerToChoose.org. The commission agrees with ARM's observations that misleading branding is already prohibited under 16 TAC §25.486. Further, the commission maintains an active trademark on the phrase "Power to Choose" and will defend it as necessary.

Comments on 16 TAC §25.112(c)(2)

ARM suggested that the registrant should be also required to provide its website address on its registration application. ARM argued that this would be of practical value and not overly burdensome. TEAM agreed with this recommendation in reply comments. TEAM pointed out that a requirement to provide a website address would align with its proposal that websites should not be deceptive, misleading, or largely duplicative of PowerToChoose.org.

Commission Response

The commission declines to require a registrant to provide its website address as part of its application. The commission does not agree with TEAM and ARM that the practical value of requiring a registrant to provide, and subsequently keep up to date, a website is enough to justify the requirement.

Comments on 16 TAC §25.112(c)(7)

ARM recommended that, for clarity, the commission should modify the required elements of the affidavit to specify that the registrant will comply with "all applicable laws and the commission's rules."

Commission Response

The commission declines to modify the affidavit, as requested by ARM. To receive a broker registration, a broker must affirm that it understands and will comply with all applicable laws and rules. Applicants must affirm their intent to follow all applicable law and rules, not just those within the jurisdiction of the commission to enforce.

Comments on 16 TAC §25.112(d)(2)

TEPA and TEAM each filed comments arguing that the basic information on the registration form does not warrant treatment as proprietary or confidential and recommended removing proposed §25.112(d)(2), which allowed a registrant to designate information on its registration as proprietary or confidential.

Commission Response

The commission agrees that the basic information required on the broker registration form does not warrant treatment as proprietary or confidential and removes proposed §25.112(d)(2) from the adopted rule.

Comments on 16 TAC §25.112(d)(4)(A)

TEPA suggested that the number of days that a registrant has to cure deficiencies in its application be increased from ten to 15, as it is possible that the notification would not reach the registrant within ten days by regular mail. In the alternative, TEPA recommended that the commission be required to provide the notification using email or registered mail. TEPA argues that a short cure window could be harmful to small brokers who are not technically savvy.

TEAM and ARM opposed TEPA's proposed change in reply comments. TEAM argued that affording registrants ten days to cure deficiencies is consistent with the commission's registration requirements for other entities. ARM pointed out that the rule provides ten working days, giving registrants more time to cure deficiencies than suggested by TEPA.

Commission Response

The commission declines to increase the number of days a registrant has to cure deficiencies in its application or change the notification requirements. The broker registra-

tion requirements do not necessitate that registrants be allowed more time to cure deficiencies than is afforded other commission-registered entities. Moreover, the rule clarifies that a deficient application is rejected without prejudice, allowing the registrant to reapply without penalty.

Comments on 16 TAC §25.112(e)

OPUC supported the three-year expiration and renewal provisions to ensure customers have access to an accurate broker list.

TEAM and ARM each argued in favor of replacing the renewal requirement with an update requirement. TEAM recommended that a broker should be required to submit an online update to its registration information or verify that the information on file remains current every three years. TEAM further recommended that if a broker fails to update or affirm its registration at least every three years, the commission may remove the broker from the list on the commission's website. In reply comments, ARM argued that failure to timely update or verify the information on file with the commission should result in revocation of the broker's registration in addition to removal from the list posted on the commission's website. ARM argues that a mandatory revocation would best incentivize brokers to keep their registrations up to date. ARM also argued that because PURA §39.3555(g) requires that a determination on an application for registration as a broker be made within 60 days, that a registrant be required to submit the update or renewal information no earlier than 60 days prior to the expiration of its registration rather than 90. In reply comments, TEAM and ARM each suggested language synchronizing these proposals.

TEPA, J. Pollock and EMEX/Patriot argued that the commission should remove the registration renewal requirement. These parties argued that PURA §39.3555 does not provide a renewal requirement and that there is no precedent for requiring a retail market entity to re-register with the commission. EMEX/Patriot contended in reply comments that the legislative intent of PURA §39.3555 was not to impose new or more restrictive requirements on brokers than are present for aggregators. J. Pollock argued that there was no compelling policy reason to require registration renewals and that it would be a drain on staff resources to process these renewal applications. J. Pollock also pointed out that the commission has the authority to revoke registrations if necessary. TEPA suggested that if this requirement remained in the rule, brokers receive a notification prior to the deadline for registration renewal, that a broker be allowed to renew at any point prior to the expiration of its registration, and the commission sunset this provision after the first three-year renewal period. TEPA further requested that the commission address what happens if a broker renews its registration after the 90-day window.

Commission Response

The commission agrees with OPUC it is important to ensure that the commission's broker list remains up to date. While PURA §39.3555 does not expressly authorize registration requirements beyond an initial registration, as EMEX/Patriot argued, it does instruct the commission to adopt rules as necessary to implement its provisions. Maintaining an accurate list of brokers currently doing business in the state is a sufficient reason to require periodic registration updates. Moreover, J. Pollock's arguments that processing registration renewals would overburden the commission's resources and that the commission can always revoke a broker's registration do not accurately reflect the relative burdens these two activities put on the commission's resources. A full revocation proceeding is significantly more involved and time consuming than processing a registration renewal or update.

The commission has replaced the registration renewal requirement with a requirement that a broker update its registration information at least once every three years. The commission has also added language to the registration amendment requirement of 16 TAC §25.112(f) to consider a registration amendment to be a registration update. These changes will ensure that the commission's records remain up to date while reducing the frequency with which a broker is required to update its registration.

The commission declines to add specific notification requirements, as requested by TEPA. It is a broker's responsibility to keep its registration up to date. The adopted rule requires a broker to update its registration at least 90 days prior to expiration. This 90-day window will provide commission staff an opportunity to contact brokers who have failed to timely update their registrations, as commission resources allow.

The commission also declines to sunset this provision, as requested by TEPA, as there is no future date at which the commission's list of registered brokers will no longer need to be up to date.

Comments on 16 TAC §25.112(g)

ARM and Calpine Retail requested three additions to the list of significant violations in proposed 16 TAC §25.112(g) based on the significant violations applicable to REPs [16 TAC §§25.107 (related to Certification of Retail Electric Providers)] and aggregators in (§25.111). These violations would include bankruptcy or insolvency, or failure to meet its financial obligations in a timely manner; suspension or revocation of a registration, certification, or license by any state or federal authority; and conviction of a felony by the registrant or a principal or officer employed by the registrant, of any crime involving fraud, theft or deceit related to the registrant's brokerage service. ARM argued that these additions would align with the statutory guidance to apply the same customer protections to brokers as aggregators. Calpine Retail argued that it could see no reason why these provisions would apply to REPs and aggregators, but not brokers. In reply comments, TEAM supported the addition of these provisions, but noted that even if they were not included in the final rule, the commission could still enforce based on them, because it is a nonexclusive list.

In reply comments, OPUC characterizes ARM's and Calpine Retail's suggestion as a requirement to disclose the conviction of a felony, and then goes on to argue that this requirement does not go far enough. OPUC contended that the commission should require the disclosure of felonies, fraud and other serious violations, regardless of whether these violations relate to the broker's brokerage services. The commission should require ample and necessary information to determine whether a person should be deemed qualified to enter a customer's home or business to provide brokerage services. Furthermore, OPUC concludes, customers have the right to this information when deciding whether to do business with a broker.

Commission Response

The commission declines to add significant violations to the list, as requested by ARM and Calpine Retail. The suggested additions do not align with requirements included in the customer protection rules that apply to brokers, so they are inappropriate for inclusion on a list of significant violations. The commission does, however, agree with TEAM's observation that this is a nonexclusive list. Moreover, the absence of a violation from this list should not be interpreted as evidence that it is not a significant violation or that it cannot serve as grounds for revocation or suspension. The purpose of this list is to highlight examples of significant violations that the commission views as clear cut and instructive for the type of entity involved.

The commission does not agree with ARM's assertion that there is no difference between brokers and other competitive entities with regard to these significant violations. Brokers are not essential for obtaining electric service. Moreover, a broker does not have the same financial responsibilities as a REP or an aggregator that collects deposits, and it does not have the ability to apply switch holds or request disconnections. Ultimately, the commission will determine if a rule violation is significant based upon the facts and circumstances involved.

The commission interprets OPUC's reply comments on this section as a reassertion of its position regarding the disclosures required under 16 TAC §25.112(c). The commission has already addressed this position.

Comments on 16 TAC §25.112(g)(6)

Authorizing Broker Fees on Retail Electric Bills

Calpine Retail requested clarification as to whether a broker can authorize the amount of the broker fee that will be embedded in the energy charge billed by the REP to the customer. Calpine Retail further developed this request in its reply, explaining that the typical arrangement between a REP and a broker is for the REP to bill all charges to the customer, including the broker fee. Because it is a violation for REPs to bill unauthorized charges, Calpine Retail believes it is important for REPs to know whether a broker is allowed to authorize these charges.

Commission Response

The commission finds that no changes are necessary based upon Calpine Retail's comments. The person who can authorize a broker's fee to be included on a retail electric customer's bill depends upon the fee arrangement. If the broker compensation is included as part of the energy charge to which the customer agreed, then no explicit customer authorization is required. In this regard, the broker fee is no different than marketing or any other cost that is embedded into the price of electric service offered by the REP. If, however, the broker's fee appears as a separate charge on a REP's bill, 16 TAC §25.481(b)(2) (relating to Unauthorized Charges) applies. Under this provision, a customer must clearly and explicitly consent to obtaining a product or service offered and to having the associated charges appear on the customer's electric bill.

Significant Violations; Unauthorized Charges

TEPA and RES Nation argued that billing an unauthorized charge or causing an unauthorized charge to be billed to a customer's retail electric service bill should be removed from the list of significant violations. TEPA stated that brokers do not have control over what charges are contained on the bill the customer receives from the REP so brokers should not be held accountable for a REP billing mistake. TEPA appreciated that unauthorized charges are possible but is not aware of a specific circumstance where brokers, in the normal course of business, would be responsible for this activity. TEPA is concerned that this provision may make brokers de facto parties to REP billing errors and disputes. RES Nation noted that it could have its registration suspended or revoked for "unauthorized billing" despite not billing customers in the first place.

TEAM disagreed with TEPA's and RES Nation's concerns over paragraph (g)(6) and advocated for it to remain intact. TEAM found the concerns misplaced because brokers have control over the violations set forth in the rule through directly billing clients (or non-clients) brokerage service fees, and by *causing* unauthorized charges to be billed by the REP. As proposed by the commission, the rule captures only "causing" behavior. TEAM provided the examples of when a broker misrepresents to a REP the amount of fee that the broker is entitled to receive from a client, or when a broker fails to make required disclosures about compensation to a client who then files a complaint concerning unexpected increases in their retail electric service bill. TEAM also commented that although RES Nation may not directly bill its clients, direct billing scenarios do exist. Subsection (g)(6) could capture a direct billing situation where a client agrees to a flat fee with a broker who subsequently sends the client a bill for a higher fee than agreed. Subsection (g)(6) remains relevant and necessary for such scenarios.

Commission Response

The commission declines to remove "billing an unauthorized charge or causing an unauthorized charge to be billed to a customer's retail electric service bill" from the list of significant violations as requested by TEPA and RES Nation. PURA §17.004(a)(1) provides all buyers of retail electric services protection from being billed for services that were not authorized. The commission considers billing an unauthorized charge or causing an unauthorized charge to be billed to a customer's retail electric account a significant violation, regardless of the type of entity responsible.

With regard to the concerns addressed by TEPA and RES Nation, the commission agrees that a broker should not be held accountable for a REP billing mistake or a charge for which it was not responsible. Whether a broker is the cause of an unauthorized charge appearing on a customer's retail electric bill will, in many instances, be a fact specific inquiry. The commission does not agree that this provision should not apply to brokers. The commission agrees with TEAM that this provision covers scenarios where a broker directly bills a client for the provision of brokerage services. The commission also recognizes that the broker industry employs a wide array of business models, some of which may allow a broker to cause a charge to appear on a customer's bill. The commission's intent is to make it clear that if a broker causes an unauthorized charge to appear on a customer's bill, it risks revocation or suspension, in addition to an administrative penalty.

General Comments on 16 TAC §25.486

Replacing "on paper or electronically" with "in writing"

TEAM suggested that references to "on paper or electronically" should be replaced with "in writing" as defined in 16 TAC §25.471 (relating to General Provisions of Customer Protection Rules) to

provide consistency across the commission's customer protection rules.

Commission Response:

The commission agrees that using the defined term "in writing" would provide consistency across the commission's customer protection rules and makes the recommended change.

Replacing "client" with "customer"

ARM recommended striking the definition of "client" and replacing "client" with "customer" throughout 16 TAC §25.486 to maintain consistency with other sections of the commission's customer protection rules. Calpine Retail and OPUC supported this proposal in reply comments. In reply comments, ARM further argued that the term "client" would create a subcategory of customer that is specific to brokers, and such a subcategory is not necessary because a customer of a broker fits within the existing definition as a person currently receiving electric service from a REP. ARM also suggested amending the definitions of "customer" and "applicant" in 16 TAC §25.471 to include brokers in Project No. 50406.

Commission Response

The commission declines to strike the definition of "client" and replace all instances of "client" throughout this section with "customer," as requested by ARM. Under 16 TAC §25.471(d)(4), a customer is a person who is currently receiving retail electric service from a REP. The commission disagrees with ARM that "client," as defined in this section, would be a subcategory of "customer." While there is some overlap, neither of these terms subsumes the other. Not all customers are receiving or soliciting brokerage services from a broker, nor are all clients currently receiving retail electric service from a REP.

Because ARM applied its suggestion to replace "client" with "customer" to each of its recommended changes, the commission considered the merits of each recommended change in the context of the related comment.

The commission also declines to make changes in response to ARM's recommendations regarding amendments to 16 TAC §25.471 because changes to that rule are not included in the scope of this project.

Prohibitions on Unauthorized Charges and Unauthorized Changes in REP

ARM, TEAM, and OPUC supported the addition of a new subsection in 16 TAC §25.486 to align with the slamming and cramming violations that are included on the significant violations list contained in 16 TAC §25.112. Specifically, ARM recommended language requiring that a broker must not bill an unauthorized charge or cause an unauthorized charge to be billed to a customer's retail electric service bill and that a broker must not switch or cause to be switched the REP of a customer without first obtaining the customer's authorization. OPUC and TEAM supported ARM's recommendations in reply comments.

Commission Response

The commission agrees with ARM that the prohibitions against unauthorized charges and unauthorized changes in provider listed on the significant violation list of 16 TAC §25.112(g) should have corresponding provisions in the customer protection rules. The commission has added 16 TAC §25.486(h), which contains ARM's recommended language.

Comments on 16 TAC §25.486(a)

ARM recommended the addition of a disclaimer sentence to clarify that nothing in this section is intended to supersede, infringe upon, limit, or otherwise reduce customer protections, disclosure requirements, and marketing guidelines otherwise established by PURA Chapters 17 and 39 or by the commission's rules. In reply comments, TEAM stated that this proposal would promote clarity and customer protections.

Commission Response

The commission declines to add the disclaimer language recommended by ARM. As a matter of law, commission rules cannot supersede, infringe upon, limit, or otherwise reduce the customer protections established by statute. If an issue arises with conflicting sections of the commission's rules, it will be resolved using the appropriate rules of construction.

Comments on 16 TAC §25.486(b)

Proposed Definition of "REP agent"

TEPA suggested adding a definition of "REP agent." TEPA argued that this would help customers understand the differences between a broker or agent that represents the consumer and an agent of the REP that is part of the sales force employed by a REP to exclusively market and sell the product and services of that REP. Calpine Retail supported this suggestion in reply comments. Calpine Retail submits that REP agents are subcontractors of the REP that have entered into an agreement to sell or promote the REP's products and services. In this subcontracting relationship, the REP is responsible for the REP agent's compliance with the commission's customer protection rules.

In reply comments, ARM opposed the addition of a definition of REP agent. ARM argued that it might cause confusion to have different types of agents defined in this portion of the rule. ARM further argued that defining REP agent here is outside of the scope of a rulemaking that is focused on brokers. ARM continued that the definition would not be helpful, because REP agents are already governed by 16 TAC §§25.107(a)(3) and 25.472(b)(1)(B)(i) (relating to Privacy of Customer Information). Finally, ARM contended that brokers are not acting as agents of a REP, because REPs do not exercise control over brokers.

Commission Response

The commission declines to add a definition of "REP agent" as recommended by TEPA. Under 16 TAC §25.107(a)(3), a REP remains accountable under applicable laws and commission rules for all activities conducted on its behalf by any subcontractor, agent, or any other entity. The REP's accountability is not limited to agents or subcontractors. Introducing a definition of REP agent in this project could have the unintended consequence of narrowing or creating confusion as to the scope of a REP's responsibility for the activities conducted on its behalf. Any proposals that would alter a REP's responsibilities, except as they relate to brokers and brokerage services, is outside of the scope of this project.

Proposed Definition of "transaction broker"

Power Wizard suggested the commission include a definition of "transaction broker," referring to brokers that are not an agent

of either party in a transaction. Power Wizard argued that customers would benefit from disclosure and transparency regarding agency obligations of brokers that are not client agents. In reply comments, ARM argued that this definition is not necessary and is a tautology because it is duplicative of the definition of "broker" already included in the proposed rule. ARM continued that this term is not referenced anywhere else in the proposed rule.

Commission Response

The commission agrees with ARM that Power Wizard's recommendation to adopt a definition of "transaction broker" is unnecessary. The term transaction broker is not used anywhere in this rule, and the commission is not imposing any unique requirements on the group Power Wizard describes as transaction brokers.

Comments on 16 TAC §25.486(b)(3)

Definition of "client"

ARM recommended modifying the definition of "client" by replacing "person" with "retail customer" as an alternative to its prior recommendation of striking the term client from this section. ARM argued that if one broker solicits services from another broker on behalf of a customer, the first broker could then be considered a "client." In reply comments, TEAM and ARM presented a synchronized proposal, recommending replacing "person" with "applicant or customer."

Commission Response

The commission declines to modify the definition of client by replacing "person" with "retail customer" or "applicant or customer," because these proposals would narrow the definition. A person who is not receiving retail electric service and has not yet applied for retail electric service can still be a client. For example, a young adult who is establishing electric service for the first time or a business planning to open its first location in this state are neither applicants nor customers.

With regard to the hypothetical presented by ARM of one broker soliciting brokerage services from another broker on behalf of a client, the commission agrees that the first broker would be a client of the second broker for purposes of this rule. However, because the second broker would not be collecting the proprietary client information of the first broker or providing the first broker with brokerage services, only a limited number of the provisions of this section would apply.

Soliciting Brokerage Services

Energy Ogre asked for clarification on what constitutes "soliciting" services. It questions whether an individual who visits a broker's website and submits their name and email for further information but never proceeds any further be considered one who solicits services and therefore falls under the category of a client. Energy Ogre recommended that a residential customer becomes a "client" when one enters into a contract with a broker.

Commission Response

The commission declines to modify the definition of "client," as requested by Energy Ogre, such that a residential customer becomes a client only upon entering into a contract with a broker. Brokers employ a diverse array of business models, many of which do not require a client to enter into a contract or provide the broker with any compensation. The commission defines "client" broadly to ensure that the customer protection provisions apply across all brokerage service models.

With regard to what constitutes soliciting brokerage services, the commission interprets this phrase broadly and according to its common usage. A person is soliciting brokerage services from a broker if it is interacting with a broker, either directly or indirectly through the broker's website or marketing materials, in an attempt to obtain brokerage services or to evaluate whether to obtain brokerage services from that broker. In Energy Ogre's hypothetical, the individual who submits their name and email on a broker's website is a client of that broker for the purposes of this section. This designation triggers the proprietary client information requirements of 16 TAC §25.486(j) and requires the broker to treat the information provided by the client accordingly. It does not, however, trigger many of the other provisions of this section, because the broker has not yet initiated the provision of brokerage services.

Comments on 16 TAC §25.486(b)(4)

Client Agent Entities

Bottom Line Energy asked for clarification on what type of entities "client agent" referenced. Bottom Line Energy requested clarity on whether this was intended to refer to an authorized agent within an organization or a broker who charges a fee and sets up a contract to shop for REP services on behalf of the organization.

Commission Response

A client agent is a broker that, as part of the brokerage services it provides, is authorized to act as the client's agent for the purpose of selection of, enrollment for, or contract execution of a product or service offered by a retail electric provider. The precise level of authority that a client agent is granted is determined by the terms of the written agreement between the broker and the client. An authorized agent within a client's organization, as described by Bottom Line Energy, is not a client agent.

Account Maintenance

Energy Ogre argued that the definition of "client agent" should be expanded to include the ongoing maintenance of the residential client's electric account as that is a much needed and desired service the client agent provides to residential customers. ARM opposed this expansion in reply comments. ARM argued that the maintenance and administration of a customer's account is the REP's responsibility. ARM further argued that a similar proposal was included in House Bill 2212, which was not voted out of the State Affairs committee.

Commission Response

The commission declines to expand the definition of "client agent" to include account maintenance as requested by Energy Ogre. The ongoing maintenance of a residential client's electric account is not a brokerage service as that term is defined in this section. If a broker provides additional services other than brokerage services to a client, such as bill payment services or energy efficiency consulting, those services are not addressed by this rule unless the provision of those services is intermingled with

brokerage services such that a broker's compliance with these rules cannot be determined without evaluating those services as well.

Non-Broker Client Agents

Calpine Retail requested that the definition of "client agent" include entities other than brokers that have the legal right and authority to act on behalf of a client regarding the selection of, enrollment for, or contract execution of a product or service offered by a REP, including electric service.

Commission Response

The commission declines to expand the definition of "client agent" to include entities other than brokers as requested by Calpine Retail. If an entity other than a broker has the legal right and authority to act on behalf of a retail electric customer or applicant, the rights and responsibilities of that entity regarding that customer or applicant are governed by the laws that created the applicable agency relationship. Agency relationships that do not involve brokers are outside of the scope of this rule.

Comments on 16 TAC §25.486(b)(5)

In response to the proposed definition of "proprietary client information," TEPA argued that electricity brokers, in the normal course of business, do not disclose client information to third parties without authorization from their client. TEPA stated that they oppose "unnecessary disclosure requirements," particularly when the potential exists for such information to be released publicly through the Open Records Act, to which state agencies are subject.

Commission Response

The commission declines to make changes based on TEPA's comments. The definition of "proprietary client information" does not create any disclosure requirements.

ARM reasserted its general suggestion that "client" be replaced with "customer" for consistency throughout the commission's customer protection rules. In reply comments, TEAM recommended expanding the section to refer to a "client or retail electric customer" to protect more information and make it clear that the specified information is proprietary even if it concerns retail electric customers that are not the broker's client.

Commission Response

The commission also declines to replace "client" with "customer," as recommended by ARM, because this would remove protections from clients that are not yet customers. The commission agrees with TEAM that including the term "retail electric customer" in addition to "client" will protect more proprietary information and makes the recommended change.

Comments on 16 TAC §25.486(c)

Under proposed 16 TAC §25.486(c), a client other than a residential or small commercial class customer or applicant, or a non-residential customer or applicant whose load is part of an aggregation in excess of 50 kilowatts, may agree, in writing, to a different level of protections than is required by this section. This agreement must be provided to the customer and provided to commission staff upon request.

TEAM suggested that proposed 16 TAC §25.486(c) should be modified to match 16 TAC §25.471, which applies to the entire subchapter and allows certain customers and applicants to agree to terms of service that, subject to certain listed exceptions, reflect either a higher or lower level of customer protections than would otherwise apply under 16 TAC Subchapter R (relating to Customer Protection Rules for Retail Electric Service). TEAM also recommended that REPs should be provided a copy of the written agreement between the broker and the client in which the client agrees to receive a lower level of customer protections from the broker. In reply comments, Calpine Retail agreed that a copy of the agreement should also be provided to the customer's REP. ARM found this subsection duplicative of the waiver provisions in 16 TAC §25.471. Furthermore, ARM argued, repetition in 16 TAC §25.486 may imply that the remaining provisions of 16 TAC §25.471(a)(3) do not apply generally to 16 TAC Subchapter R, which could result in unintended regulatory uncertainty. Accordingly, ARM recommended deletion of this section or alternatively replacing "client" with "customer." In reply comments, TEAM agreed with ARM's initial comment that subsection (c) could be deleted with modification to 16 TAC §25.471 to include brokers in the scope of some aspects of that rule.

EMEX/Patriot disagreed that proposed 16 TAC §25.486(c) is duplicative of 16 TAC §25.471 on the grounds that 16 TAC §25.471 applies to REPs, not brokers.

EMEX/Patriot also disagreed that the customer protection agreements required under this subsection should be provided to REPs, stating that no rationale has been provided for why brokers should have to reveal provisions of their business relationships regarding customer protections with REPs. Enel X also opposed requiring brokers to share customer protection agreements with REPs, who are not regulators. Enel X argued that only the commission has that authority. Sharing market sensitive and proprietary information with REPs would violate the customer's right to confidentiality of its arrangement with the broker. Finally, Enel X noted that there is no need to share this agreement with the REP because the customer's agreement with their broker has no bearing on the relationship between the REP and the customer.

TEPA recommended clarifying that brokers need to disclose only the relevant portions of contracts that contain voluntary alternation of customer protection provisions. To require disclosure of the full agreement would be violative of the requirements to protect "proprietary client information" as defined in 16 TAC §25.486(b)(5) of the proposed rule. The rule should not require a broker to provide entire contract agreements or other information unnecessary for a specific identified purpose or not authorized by the broker's client. In reply comments, TEAM agreed with TEPA that the disclosure could be limited to the relevant portions of the contract.

In reply comments, ARM reiterated its belief that this subsection is duplicative of 16 TAC §25.471 and should be struck. ARM argued that if it is not struck, the agreement at issue is inherently relevant in its entirety and the commission should require disclosure of the full contract to the REP.

Commission Response

The commission does not agree that 16 TAC §25.486(c) is duplicative of the waiver provisions contained in 16 TAC §25.471(a)(3), which provide certain customers with the ability to waive, with certain exceptions, the customer protections in Subchapter R. The language in 16 TAC §25.486(c) has a much narrower focus, in that it allows certain clients

of brokers to agree to a different level of customer protections related to the provision of brokerage services than is provided in 16 TAC §25.486. A client that agrees to a different level of customer protections related to the provision of brokerage services does not, by virtue of that agreement, waive any other customer protections they are entitled to under Subchapter R. The commission has added language to clarify this point.

The commission declines to add language requiring a broker to provide to a client's REP a copy of a written agreement, or a relevant portion of an agreement, entered into under this subsection. The commission agrees with Enel X that such agreements might contain sensitive or proprietary information a REP is not entitled to, and that the agreements do not necessarily have any bearing on the relationship between the client and their REP. If a REP believes that it needs access to such agreements, it can obtain them through private agreement with the parties involved.

Comments on 16 TAC §25.486(d)

ARM recommended including a provision holding a broker responsible for its representations to customers and applicants by employees or other agents of the broker concerning brokerage or retail electric service that are made through advertising, marketing, or other means. TEAM supported this proposal in reply comments.

Commission Response

The commission declines to include a requirement holding a broker responsible for its representations as requested by ARM, as it is unnecessary. All broker communications are required to be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive under 16 TAC §25.486. However, the commission agrees with ARM that a broker is responsible for the actions of its employees or other agents. As previously noted, the commission added language to 16 TAC §25.112(a) to clarify this responsibility.

Comments on 16 TAC §25.486(d)(1)

ARM, TEAM, and OPUC recommended adding three additional prohibited communications to the nonexclusive list in 16 TAC §25.486(d)(1). First, ARM recommended prohibiting the use of the term "fixed" to market a product that does not meet the definition of a fixed rate product. ARM argued that this prohibition already applies to REPs and aggregators under 16 TAC §25.475(c)(1)(A). ARM also noted that the commission has already received a formal complaint involving this topic *(see* Docket No. 43337, *Complaint of Syed Enterprises Inc. Against AP Gas & Electric LLC).* Second, ARM recommended prohibiting falsely stating or suggesting that pricing or contract terms are offered by a REP if they are not so offered. ARM pointed to a pending formal complaint involving this issue as well *(see* Docket No. 46951, *Complaint of Romtex Enterprises, Inc).* Last, ARM recommended prohibiting falsely suggesting, implying, or otherwise leading someone to believe that a contract has benefits for a period of time longer than the initial contract term, which is also applicable to REPs and aggregators under 16 TAC §25.475(c)(1)(A). TEAM supported ARM's recommendations in reply comments. OPUC also supported ARM's recommendations and stated that it is very important and necessary that customers understand the terms of the agreement that they are entering into and it is unacceptable for customers to be given false or misleading information about contract terms.

Commission Response

The commission declines to add additional items to the list of examples of prohibited communications, because these additions are unnecessary on a nonexclusive list. The core requirement of this subsection is that broker communications must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Each of the activities described by ARM are unambiguous violations of the general prohibition.

Comments on 16 TAC §25.486(d)(1)(A)

ARM and TEAM suggested changes to the prohibition against leading a client to believe that receiving brokerage services will provide a customer with more reliable service from a TDU. First, these parties argued that "better quality service" should be used instead of "more reliable service" because reliability has a narrow meaning in the electric industry and this change would align this provision with 16 TAC §25.475(c)(1)(A)(iii), applicable to REPs and aggregators. Second, they argued that brokers should also be prohibited from representing that receiving brokerage services will provide a customer with better quality service from a REP, because REPs provide the same quality of service to all similarly situated customers.

ARM further recommended replacing "client" with "someone" in this provision to ensure that brokers are not permitted to mislead potential as well as current customers.

Commission Response

The commission declines to replace "more reliable service" with "better quality service" as requested by ARM and TEAM. The commission agrees that more reliable service has a specific meaning in the utility industry, and this meaning aligns with the commission's intended prohibition. A broker cannot represent to a client that brokerage services can provide the client with fewer outages or otherwise affect the continuity or adequacy of that client's electric service, because these claims are necessarily false. A retail electric customer's choice of REP or broker has no effect on the reliability of electric service. A broker may offer a wide array of consulting services and expanding this provision with a broad phrase such as "quality of service" might prevent a broker from engaging in otherwise legitimate business activities. The general prohibition against misleading, fraudulent, unfair, deceptive, or anti-competitive representations is sufficient to prevent brokers from making false representations in this area.

The commission also declines to expand the language of this prohibition to representations about the quality of service provided by REPs. REPs and brokers are each customer-facing entities that employ widely different practices in areas such as pricing, customer service, and complaint handling. Unlike with a TDU, it is not inherently misleading for a broker to represent that it can help pair a client with a REP that best suits its particular preferences or that it has the ability to work with certain REPs to obtain better quality of service for a client. However, to the extent that a broker is making false claims about the quality of service provided by a particular REP, the general prohibition against misleading, fraudulent, unfair, deceptive, or anti-competitive communications applies.

The commission also declines to replace "client" with "someone" in this section as requested by ARM, because

it is unnecessary. Client is defined to include a person that solicits brokerage services. This ensures that a person that ARM describes as a potential customer is also protected by the language of this section.

Comments on 16 TAC §25.486(d)(1)(C)

Regarding the prohibition against a broker falsely suggesting that brokerage services are being provided without compensation, TEPA noted that its code of conduct already prohibits this conduct. Brasovan supported retaining this requirement but suggested that it be reframed as a prohibition against falsely stating or suggesting that the brokerage services are being provided at no cost to the customer, whether paid for directly or indirectly by the customer.

Commission Response

The commission declines to make changes based upon these comments. TEPA's code of conduct is not a sufficient substitute for a commission rule. The commission cannot rely upon an individual organization to fulfill the commission's statutory obligation to provide customer protections to the recipients of brokerage services in Texas.

The commission also declines to reframe the prohibition against falsely stating or suggesting that brokerage services are being provided without compensation in terms of costs, directly or indirectly, borne by the customer as suggested by Brasovan. Whether a broker is receiving compensation is a much more straightforward and enforceable standard than whether those services are being provided at no cost to the client. In many instances, a retail electric customer represented by a broker is offered the same rate as a retail electric customer who is not represented by a broker. If the broker in this scenario receives compensation from the REP when the client enrolled, it is not clear if the client incurred any indirect costs. It is, however, clear the broker received compensation for providing brokerage services.

Comments on 16 TAC §25.486(d)(1)(D)

Brasovan requested clarification on whether "falsely claiming to be the client agent of a customer" refers to a broker falsely claiming to the REP that it is working as an agent of the customer or falsely claiming to the customer that it is working as an agent to the customer and, therefore, only in the customer's best interest. Brasovan suggested that both of these activities should be prohibited.

Commission Response

As proposed, this prohibition referred to a broker falsely claiming to be a client agent of a customer as that term is defined in 16 TAC §25.486(b)(4). This communication is prohibited whether the communication is directed at the customer, a REP, or any other person. No changes are required to address Brasovan's suggestion.

However, the commission does expand 16 TAC §25.486(d)(1)(D) to prohibit falsely claiming to be a client agent of a "customer *or applicant."* Under 16 TAC §25.471(d)(1), a person who is applying for retail electric service is defined as an applicant. Brokers are also prohibited from falsely claiming to be the client agent of a person who is applying for retail electric service.

Comments on 16 TAC §25.486(d)(2)

This section requires a broker to include its registered name on all printed advertisements, electronic advertising over the Internet, and websites. ARM and Power Wizard recommended that brokers also be required to include their registration number on these communications. ARM argued that this would not be burdensome, would help customers verify a broker's registration status, and is consistent with the aggregator requirements. TEAM supported this addition in reply comments.

Commission Response

The commission declines to require brokers to include their registration number on all marketing materials. The commission does not agree that a customer will be unable to verify a broker's registration status with the broker's registered name. Moreover, many brokers have been in operation for many years, and requiring the inclusion of a recently assigned registration number would require a broker to replace all of its existing marketing materials to comply with the rule.

Comments on 16 TAC §25.486(e)

ARM argued that PURA §39.3555 specifically invokes the applicability of Chapter 17 of PURA to brokers and that PURA §17.004(a)(3) requires certain information to be made available in English, Spanish, and other languages as determined by the commission. ARM continued that the broker rules should include provisions similar to those in effect for aggregators to give effect to this provision. Specifically, ARM recommended that brokers be required to provide the terms of service documents required by this subchapter and information concerning the availability of electric discount programs to the client in English, Spanish, or the language used to market the broker's products and services, as designated by the customer. TEAM and OPUC supported this recommendation in their respective reply comments. OPUC agreed with ARM's statutory analysis and explained that this would provide additional and necessary customer protection safeguards that will enable customers to understand all aspects of the terms of services being offered by the broker.

ARM also requested the inclusion of a provision stating that if a broker markets a REP's services in a language that the REP is unable to support, the broker will be responsible for assisting the customer with translation services and the REP will not be held responsible for supporting that language under this subchapter. TEAM supported this request in reply.

TEPA replied generally to the comments filed by ARM and OPUC that the services for which a broker may be held accountable must necessarily be services that a broker offers and may legally offer retail electric customers rather than for services for which a broker is not legally authorized to provide under new and existing laws.

Commission Response

The commission declines to expand the requirements of this subsection, as requested by ARM, TEAM, and OPUC. Terms of service documents are REP-created documents that are relevant to the relationship between REPs and customers. As such, requirements related to these documents fall outside of the scope of this rulemaking.

The commission also declines to require brokers to provide translation services if they market a REP's services to a client in a language that the REP cannot support. Requiring a broker to provide ongoing translation services is overly burdensome.

The commission modifies the language of 16 TAC §25.486(e) by replacing the word "provide" with "offer." This modification is intended to allow brokers and clients to agree to a different language for communications, so long as the client has the option of receiving information in the language that was used to market the broker's services to the client.

Comments on 16 TAC §25.486(f)

Regarding the disclosures a broker is required to provide a client prior to the initiation of brokerage services, TEPA noted that its members have strong policy objections to "this type of business practice regulation" being applied to the fully competitive discretionary services offered by brokers.

Commission Response

PURA §39.3555(e) explicitly requires a person that registers as a broker with the commission to comply with disclosure requirements established by the commission and PURA, Chapters 17 and 39. The disclosure requirements the commission is applying to the broker community are not overly burdensome and are necessary to provide clients with enough information to make informed decisions regarding the selection of a broker.

Grandfathering Clause for Existing Clients

TEPA requested that the commission include a grandfathering clause to allow brokers to provide the required disclosures to existing clients at the renewal of an existing broker-client agreement. TEAM supported TEPA's proposal in reply comments and recommended the commission also require brokers to provide the required disclosures concurrently with the client's renewal of brokerage services.

Commission Response

The commission declines to include a grandfathering clause as none is necessary. These disclosures are required prior to the *initiation* of brokerage services, but the requirement does not apply to brokerage services that were initiated prior to the adoption of these rules. However, the commission agrees that these customers should receive these disclosures upon the renewal of those services. The commission adds language to clarify this requirement and to require the broker to provide these disclosures when there is a material change in the services provided or in the terms and conditions of the services provided.

Disclosure of Broker Type

Power Wizard suggested that the commission require a broker to disclose whether the broker is acting as a client agent, a transaction broker, or as an agent of the REP. Power Wizard argued that broker clients would benefit from a direct disclosure of which parties to the retail electric transaction, if any, the broker owes a duty of loyalty, or other fiduciary responsibility.

Commission Response

The commission declines to add language requiring a broker to disclose whether they are acting as a client agent, a transaction broker, or as an agent of the REP as none is necessary. A broker acting as a client agent is subject to specific disclosure requirements under 16 TAC §25.486(g), and the commission is not adopting "transaction broker" or "REP agent" as defined terms.

Comments on 16 TAC §25.486(f)(3)

TEPA supported the proposed requirement that brokers must disclose their relationships with REPs to individual customers. It argued this would provide customers with the transparent and reliable information needed to make informed decisions about market participants. TEPA contended that customer confidence is necessary to preserve the value of brokers in the marketplace.

ARM, TEAM, and Calpine Retail advocated for expanding the affiliate disclosure requirement beyond REP affiliations. ARM recommended disclosure of all customer-facing affiliated entities and suggested language adding aggregators or other brokers that are affiliates of the broker. Calpine Retail supported ARM's position, arguing that the commission should require disclosure of these affiliate relationships, establish a code of conduct for REP-affiliated brokers, or both. Calpine Retail asserted that over the past year, several REPs have either started or purchased brokers, which presents a clear conflict of interest. Calpine Retail viewed this disclosure as especially important because there are no requirements for REP-affiliated brokers to provide written contracts to customers with a description of services provided or other relevant information. TEAM also supported ARM's position in reply but thought the language should capture other market-related affiliations by adding wording to include any affiliate of the broker who is registered or certified by the commission.

Commission Response

The commission declines to expand the affiliate disclosure requirements to include entities other than REPs. The role of a broker in the market is to assist its clients in the selection of a REP or product. A broker affiliated with a REP could present a conflict of interest, because the broker would have a direct financial incentive to persuade its clients to enroll with its affiliate. Brokers' relationships with other market entities do not present the same inherent risk so a mandatory disclosure requirement is not necessary. However, if an interested client requests information on a broker's other affiliates, a broker is prohibited from misleading or deceiving the client under 16 TAC §25.486(d). If the broker elects not to disclose the requested information, the client can choose not to make use of its services.

Comments on 16 TAC §25.486(f)(5)

ARM suggested removing the modifier "if applicable" from the requirement to disclose the duration of the agreement to provide brokerage services. ARM stated that all agreements, even one-time agreements, will have a duration, and the customer will benefit from having clarity regarding the duration of the agreement.

Commission Response

The commission declines to remove "if applicable," as requested by ARM. Brokerage services can include elements that do not have a meaningful duration. For instance, the service offered by an online shopping site that allows a client to generate a list of retail products that meet certain criteria does not have a meaningful duration.

Comments on 16 TAC §25.486(f)(6)

TEPA opposed the inclusion of any broker compensation requirements. It also argued that the method and amount of compensation is proprietary, and requiring disclosure is anti-competitive and will force the commoditization of brokerage services. TEPA further asserted that requiring compensation disclosure goes beyond the oversight extended to the commission by PURA §39.3555 and requested that the commission refrain from assert-

ing any form of regulatory oversight or restrictions on the rates or prices of brokers. In reply comments, TEPA noted that the TEPA code of conduct requires brokers to disclose their fee upon request by the customer and stated that TEPA does not oppose that type of requirement.

Energy Ogre, Power Wizard, John Turala, ARM, and Brasovan supported the compensation disclosure requirement as proposed. Energy Ogre argued that the requirement is both reasonable and consistent with other types of required disclosures in the industry. Energy Ogre further argued that the compensation a broker receives, and from whom, is vital information to a residential customer. However, Energy Ogre indicated that a distinction could be made on the need for disclosure of compensation in a commercial setting versus a residential setting. John Turala argued that disclosure is important for transparency purposes. Brasovan suggested that brokers should also have to disclose how much compensation they receive from a REP. Brasovan further recommended that REPs should have to guarantee this compensation in their contracts. ARM specified that it valued transparency and that it is not asking for the rates of brokers to be regulated beyond disclosure requirements.

Electricity Ratings and RES Nation supported fee disclosure only in circumstances where the broker is directly compensated by the client. Electricity Ratings argued this approach would avoid confusion as to whether compensation received by brokers from third party sources relates to brokerage services or other unrelated services the broker provides. RES Nation also argued that this will maintain the privacy of business relationships in the competitive marketplace.

In reply comments, TEAM argued that the position taken by RES Nation and Electricity Ratings opens the door to manipulation and circumvention of the rule. TEAM asserts that a broker seeking to avoid disclosure obligations may argue that a fee charged to a client as part of the energy charge on the customer bill provided by the REP is indirect, alleviating the broker's disclosure obligation. TEAM recommended that the details to be disclosed include the amount the client will pay or how the compensation will be calculated, and how the compensation will be billed to the client. TEAM argued that brokers bill a number of different ways, and customers need to know where to look to evaluate whether they are being appropriately billed for brokerage services.

Commission Response

The commission disagrees with TEPA that compensation disclosure is inherently anti-competitive and would force the commoditization of brokerage services. Nearly every competitive industry has transparent pricing. The commission also disagrees with TEPA's contention that compensation disclosure goes beyond the oversight extended to the commission by PURA §39.3555. The plain text of PURA §39.3555 requires a broker to "comply with...disclosure requirements...established by the commission."

Prior to the initiation of brokerage services, a broker is required to provide its client a description of how the broker will be compensated for providing brokerage services and by whom. This level of mandatory disclosure coupled with the prohibition against unauthorized charges of 16 TAC §25.486(h) provides clients with adequate customer protections in this area. Accordingly, the commission removes the language from proposed 16 TAC §25.486(f)(6) that required a broker to disclose the details of compensation provided directly by the client.

The commission declines to adopt the recommendation of Brasovan that brokers be required to disclose the amount of compensation that they receive from REPs. The knowledge that a broker is being compensated by a REP is enough to alert a client to possible conflicts of interest while respecting the proprietary practices of brokers. The commission notes that there is no rule against a broker disclosing the full details of its compensation, nor is there a rule against a client requesting those details.

The commission also declines to require REPs to guarantee a broker's compensation in their contracts, as requested by Brasovan. If a broker desires to have its compensation guaranteed by a REP, it can negotiate for that term with the REP.

Comments on 16 TAC §25.486(f)(7)

TEPA argued that requiring a broker to disclose how a client can terminate the agreement to provide brokerage services is overly prescriptive and asserted that the matter of contract termination by the client should be left to the representation agreement between the broker and client. It further argued that termination is covered in such agreements and should not be subject to additional disclosure requirements. OPUC disagreed, arguing that customers should have the right to know how to terminate a brokerage services agreement. ARM also opposed TEPA's position, arguing that this requirement is relevant and not overly burdensome.

Commission Response

The commission declines to make changes in response to these comments as none are necessary. The commission agrees with OPUC and ARM that requiring a broker to disclose how a client can terminate an agreement to provide brokerage services is essential information for the client and not overly burdensome for the broker. The required disclosures can be provided to the client as a part of the representation agreement, prior to the initiation of brokerage services.

Calpine Retail commented that generally there is no agreement between a broker and a customer unless the broker directly bills the customer via a separate invoice. They explained that broker fees are typically included in the REP bill, so the commission needs to provide guidance on how REPs should respond to requests by customers wanting to terminate their arrangement with the broker. Calpine Retail also noted that the commission should revise the rule to require brokers to notify REPs how to handle such termination.

Commission Response

With regard to Calpine Retail's request for clarity on how a REP should proceed if a customer who wishes to terminate its relationship with the broker contacts the REP, it is the commission's intent that this situation be addressed by the parties through private agreement.

Comments on 16 TAC §25.486(f)(8)

TEPA argued that requiring a broker to disclose early termination fees is overly prescriptive and should be left to the representation agreement between the broker and its client. ARM argued in reply comments that this requirement is relevant and not overly burdensome so should be included in the final rule.

Commission Response

The commission declines to make changes in response to these comments as none are necessary. The existence of a termination fee is a critical piece of information. The commission agrees with ARM that this requirement is not overly burdensome. The required disclosures can be provided to the client as a part of the representation agreement, prior to the initiation of brokerage services.

Comments on 16 TAC §25.486(g)

Comments related to whether REPs are required to accept client agent submitted enrollments

Energy Ogre and Power Wizard argued that REPs should be required to accept customer enrollments submitted by client agents on behalf of their clients. Energy Ogre argued that REPs use a variety of tactics, such as enrollment delays and Internet Protocol address blocking, to delay or prevent enrollments by client agents. Energy Ogre represented that it is always upfront with the terms of agent authorization with its clients and its clients knowingly and willing enter into an agreement with Energy Ogre. Energy Ogre continued that as the market evolves and becomes more complicated, it will be increasingly important for a broker like Energy Ogre to have the authority to act on behalf of its residential customers. Energy Ogre advocated for a commission review and approval process for broker agency agreements.

Power Wizard proposed, in reply comments, that "the Commission require REPs to accept all customer enrollments that are complete, including all customer information that is required to process the enrollment, and are accompanied by a simple confirmation from the enrolling client agent that they have obtained authority from the retail electric customer using the Commission approved form text." The combination of a completed enrollment, which includes information that can only be obtained with the assistance of the retail electric customer, and verification of agent authority on a commission-approved form text, which the commission can request from the broker at any time, should be all that is necessary for a customer to utilize the services of a client agent and enroll with a REP.

In reply comments, EMEX/Patriot argued that any disputes between individual client agents and REPs regarding agency agreements should be resolved commercially or through agency law. EMEX/Patriot asserted that it has used agency agreements for nearly 20 years in almost every restructured electric market and has not experienced even one instance of a REP refusing to accept its agreement, which it provides to REPs with all its executed client contracts. EMEX/Patriot argued that if specific brokers have encountered problems with REPs accepting their agreements, "it is not likely because REPs are being arbitrary in their standards." EMEX/Patriot argued that the value that brokers bring to the table is that they have strong relationships with their clients and are trusted by REPs.

TEAM and ARM each argued that REPs should not be required to accept a broker's representation that it has legal authority to execute an enrollment for a customer. ARM argued that this violates a bedrock principle of a free and competitive market that buyers and sellers come together willingly. Similarly, TEAM argued that in the competitive marketplace a service provider should not be forced to be in the position of accepting another company's determinations of who the service provider's customers might be, or the terms of the contract with those customers. TEAM recommended the commission include language that a REP is only required to accept a broker's representation of agency authority if the broker has a statutorily-recognized durable power of attorney.

ARM, EMEX/Patriot, Energy Ogre, and Power Wizard filed reply comments opposing TEAM's proposed durable power of attorney language. ARM argued that REPs should be able to decide what evidence of agency authority they will accept because REPs are liable under the customer protection rules for unauthorized enrollments. ARM also worried that requiring "a REP to accept certain types of purported evidence may put a REP in a position where it is required by one rule to violate another rule."

EMEX/Patriot, Energy Ogre, and Power Wizard each argued that a durable power of attorney is unnecessary. EMEX/Patriot asserted that the requirement would be unique to this jurisdiction. Energy Ogre and Power Wizard contended that requiring a durable power of attorney would set an impractical standard and goes against the goals of bolstering customer protections and maintaining a healthy and robust marketplace. These parties also pointed out that a durable power of attorney is used to convey broad and sweeping power to an agent. A client agent is not making potentially lifesaving medical decisions or executing an estate for a deceased or incapacitated person. Other agents, such as insurance and real estate agents, are not required to have a durable power of attorney.

In reply comments, ARM and TEAM suggested language clarifying that a REP is not obligated to accept a third-party's representation or evidence that it has legal authority to execute enrollment for the customer.

Commission Response

The commission declines to include language governing under what circumstances a REP must accept a broker's representation that it has agency authority to act on a client's behalf or that requires a REP to accept an enrollment submitted by a client agent. The commission agrees with EMEX/Patriot that these issues should be resolved commercially and through agency law. The commission does not intend to alter or adjudicate any claims of agency authority that may exist under areas of law that are not within the commission's jurisdiction.

With regard to Energy Ogre's arguments about the tactics that REPs use to prevent the enrollment of applicants that are represented by client agents, the commission agrees with ARM and TEAM that a fundamental principle of competitive markets is that buyers and sellers come together willingly. As long as it abides by the discrimination prohibitions of PURA and 16 TAC §25.471(c), and any other applicable laws, a REP is not prohibited from refusing to provide electric service to the clients of client agents.

While the commission will not prohibit REPs from verifying the agency authority of client agents before enrolling a client as a customer, the commission adopts the following language to reduce the compliance risk for REPs and facilitate quicker enrollments of this type: "For purposes of complying with the requirements §25.474, a REP may rely upon the representations made by a client agent provided that the client agent is registered with the commission and provides evidence of agency authority."

Comments Related to a Standardized Agency Authorization Process

Energy Ogre proposed that each broker create its own version of the client agent agreement to allow for individuality and cre-

ativity. After being submitted to and approved by the commission, the form could contain the words "this form approved by the PUC." Energy Ogre argued that having over one thousand different forms would lead to confusion for all parties involved, but that commission approval would mitigate that confusion.

Bottom Line Energy and Energy Ogre each requested that the commission adopt a standard client agency agreement. Bottom Line Energy argued that a standard one-page form would be simple and give a client a general understanding of how the agency relationship would work. Energy Ogre supported a standard form as an alternative to its proposal of commission-approved forms. In reply comments, Power Wizard supported the commission adopting standardized form text.

TEAM argued in reply that the commission does not need to become involved in the private party contractual matters between competitive market entities and opposed all of the standardized form proposals.

TEPA, ARM, and EMEX/Patriot all filed reply comments opposing the adoption of a standard form. TEPA argued that a standardized form is not provided for by PURA §39.3555 and the legislature did not adopt other legislation with similar language. TEPA also requested that if the commission did adopt a standardized form, that it only apply to residential customers. EMEX/Patriot asserted that no other jurisdiction requires a specific form for such agreements for client agents and that disagreements between competitive entities should be resolved commercially or under agency law.

Commission Response

The commission declines to add a provision creating a commission review and approval process for broker agency agreements. The commission also declines to create a standard agency authorization form. The commission agrees that it should not interfere with contractual matters of private parties more than is necessary to provide recipients of brokerage services with adequate customer protections. Additionally, individually preapproving a separate broker agency agreement for each broker would be a drain on the commission's resources. Conversely, a standardized form would limit the ability of brokers and clients to negotiate specific terms tailored to the intended relationship between the two parties. The commission also notes that mandatory REP contract documents, such as the Terms of Service document, the Your Rights as a Customer document, and the Electricity Facts Label, do not have commission-approved forms, despite the commission having a greater level of authority over REPs than brokers.

Comments Related to Mandatory Indemnification

TEAM proposed that client agents be required to indemnify the REP against any future complaints, actions, and harm resulting from any and all claims that the enrollment was not authorized or verified or that the broker did not have authority to act as the client's agent. In reply comments, TEAM and ARM each submitted a modified version of this proposal that would allow REPs to require a broker that acts as a client agent to provide the indemnification described above.

In reply comments, EMEX/Patriot and Power Wizard opposed the proposal that client agents be required to indemnify REPs. EMEX/Patriot argued that REPs and brokers are sophisticated commercial actors and are equipped to establish fair terms for dealing with such situations in the commercial agreements between one another, as is the practice today. Power Wizard added that if brokers falsely claim to have agency authority, the commission has authority to pursue enforcement actions against the person responsible for the unauthorized enrollment. The commission will not pursue an enforcement action against a REP if the broker is solely responsible.

Commission Response

The commission declines to include language requiring that client agents provide REPs with indemnity as suggested by TEAM. The commission agrees with EMEX/Patriot that REPs and brokers can establish fair terms through private contract. For purposes of complying with the requirements of 16 TAC §25.474, 16 TAC §25.486(g)(4) allows a REP to rely upon the representations made by a client agent provided that the client agent is registered with the commission and provides evidence of agency authority. If desired, REPs and brokers may negotiate for further indemnification by private agreement.

Comments of 16 TAC §25.486(g)(2)(E)

ARM suggested that the commission specify that the customer data referenced in this provision includes the customer's proprietary customer information. This will require a client agent to inform the client how its proprietary customer information will be used, protected, and retained by the broker and disposed of at the conclusion of the agency relationship. TEAM and ARM included language that incorporated this suggestion in the synchronized language in reply comments.

Commission Response

The commission agrees with ARM that this is a useful clarification. The commission adds language to this provision clarifying that the customer data referenced in this provision includes the client's proprietary client information.

Comments on 16 TAC §25.486(g)(3)

ARM supported language in the proposal that requires a client agent to provide evidence of its agency authority upon the request of a REP with which the broker seeks to enroll its client. ARM requested that the commission also require a client agent to provide notice to the customer's REP of record when a broker's agency authority changes or is revoked by the customer. TEAM and ARM presented synchronized language in reply comments that incorporated this recommendation.

Power Wizard requested the commission strike the requirement that brokers provide evidence of agency authority to a REP with which the broker seeks to enroll the client. Power Wizard argued that delegating the verification of the client agent to REPs is unnecessary and opens the door to potential anti-competitive abuses and discrimination by REPs against customers who use concierge services and other shopping tools to make better shopping decisions. Power Wizard noted that the proposed rule was silent with regard to both the reasons such evidence is required and the rules that govern the actions a REP must take after evidence of agent authority has been provided.

In reply comments, Power Wizard argued that 16 TAC §§25.112 and 25.486 provide the commission with sufficient oversight authority to distinguish rule violations by brokers from rule violations by REPs, as well as providing enforcement authority to hold brokers accountable for rule violations. If a broker misrepresented its client agent authority, the broker would be subject to a possible enforcement action by the commission. Power Wizard fur-

ther argues that these new powers eliminate the need for REPs to police broker representations regarding client agent authority, thereby also eliminating any need for REPs to receive notice regarding changes to a client agent's authority.

ARM filed reply comments opposing Power Wizard's proposal. ARM noted that although brokers will now have some responsibility related to customer complaints, the REP has financial and regulatory responsibility for the unauthorized enrollment of a customer. ARM asserted that a party dealing with an agent has an obligation to ascertain not only the validity of the agent's authority but also the extent. As applied here, a REP needs to know whether a broker has agency authority with respect to a customer and the scope of that authority. In the context of a broker, ARM argued, apparent authority is not sufficient. ARM distinguished this from a situation where a REP may reasonably assume that an officer of a company is authorized to execute a retail electric contract on behalf of the company. If the broker did not have the agency to bind a customer to a contract, that contract would be invalid, but the REP would likely have already incurred costs (such as hedging, TDU charges, and wholesale settlements) that may not be recoupable.

Commission Response

The commission declines to require client agents to notify a client's REP of record when their agency authority changes or is terminated. The rule requires brokers to provide evidence of their agency authority to a REP at the time the broker seeks to enroll the client so that the REP can avoid fraudulent enrollments. However, the rule does not prohibit REPs and brokers from agreeing to additional notifications.

The commission also declines to strike the requirement that brokers provide evidence of agency authority upon the request of REPs with which the broker seeks to enroll a client. The commission does not agree with Power Wizard's contention that the commission's ability to pursue enforcement actions against fraudulent claims of agency authority eliminates the role that a REP plays in protecting the integrity of its enrollment process. The commission agrees with ARM that REPs have financial and regulatory responsibility for unauthorized enrollments and need to have the ability to verify the authority of agents with which they do business. REPs are also in the best position to prevent unauthorized switches before they occur.

The commission disagrees with Power Wizard's assertion that allowing REPs to verify the agency authority of a client agent opens the door to anti-competitive abuses by REPs.

Comments on 16 TAC §25.486(h)

Proposed 16 TAC §25.486(h) authorized a broker to enter into an agreement with a REP to assume all or part of the REP's enrollment responsibilities without creating an agency relationship with that REP. TEPA, ARM, and Power Wizard each filed comments indicating that the roles of the different entities envisioned by this section needed to be clarified. ARM believed that the phrasing of proposed subsection (h) may lead to confusion over which entities can enroll customers and act as an agent. ARM also expressed concerns with any proposal that would mandate that REPs enroll customers represented by a broker or client agent.

TEAM argued that performing actions on behalf of a REP does not comport with the definition of brokerage services, and entities that are doing so currently are already under the commission's jurisdiction as an agent of the REP. ARM and Power Wizard argued that brokers are not REP agents. TEAM, ARM, and Power Wizard agreed that REPs should not be held accountable for broker actions outside of an agency relationship. ARM argued that while REPs may enter into agreements with brokers to accept customers enrolled by the brokers, the existence of such an agreement does not create an agency relationship between the REP and broker, and therefore, brokers should be required to comply with 16 TAC §25.474 both as a matter of practice and as a means to give effect to the text and written legislative intent of PURA §39.3555. Power Wizard agreed that brokers are not REP agents, but clarified that brokers were not necessarily client agents either. To avoid confusion regarding liability and fiduciary responsibilities, Power Wizard argued these brokers should be recognized as independent agents who represent their own interests, and the commission should hold them, and not REPs accountable for any violation of the commission's customer protection rules.

TEPA argued that the proposed "broker enrollment" provisions are unnecessary, because commission rules already provide authority for entities such as brokers to provide "retail electric functions" without specific authorization in the commission's rules or a contract with a REP. In making this claim, TEPA relied upon 16 TAC §25.107(a)(2), which establishes that a person "who does not purchase, take title to, or resell electricity in order to provide electric service to a retail customer is not a REP and may perform a service for a REP without obtaining a certificate pursuant to this section," and 16 TAC §25.107(a)(3), which clarifies that when a REP contractually outsources a service for which a REP certificate is not required (i.e. services referred to in the rule as "retail electric functions"), it remains responsible "under Commission rules for those functions and remains accountable to applicable laws and Commission rules for all activities conducted on its behalf by any subcontractor, agent, or any other entity." TEPA also noted that no provisions identified in statute or in 16 TAC §25.107 require an outsourced retail electric function be provided through a contract with the REP.

TEAM, ARM, and TEPA each requested that the commission strike proposed subsection (h) entirely, but each also recommended language as an alternative. TEAM proposed clarifying that a broker in this situation must also comply with 16 TAC §25.474 and all its advertising claims must comply with 16 TAC §25.475(i). In reply, ARM indicated that TEAM's clarification would be helpful, but preferred its recommendation to incorporate 16 TAC §25.475(i) into proposed 16 TAC §25.486(d) to be more consistent with the rule provisions that apply to aggregators and REPs. In initial comments, ARM recommended modifying this subsection to allow brokers to conduct customer enrollments under 16 TAC §25.474 and to require that an agreement between a REP and a broker under this subsection must be memorialized on paper or electronically and provided to the commission upon request. In reply comments, ARM and TEAM each presented a synchronized proposal that required a broker that is not an agent of a REP under 16 TAC §25.471(d)(10) that conducts all or part of a customer enrollment must do so in compliance with the requirements of 16 TAC §25.474. They further recommended that a REP may, but is not required to, accept such enrollments, and any agreement between a REP and a broker under this subsection must be memorialized on paper or electronically and provided to the commission upon request.

TEPA recommended the commission adopt a definition of "enrollment services" as the process of obtaining authorization and verification for a request for service that is a move-in or switch

in accordance with 16 TAC §25.471. TEPA also recommended a definition for a "client enrollment agent" be referenced in this section, and added to the definitions section of the rule to help consumers distinguish between: (a) brokers who may simply be "brokers"; (b) brokers who act in an agency relationship with a customer; and (c) and brokers who have entered into an agreement with a REP to enroll customers or applicants under the terms specified in this new proposed section.

Commission Response

Proposed 16 TAC §25.486(h) was intended to provide requirements for ongoing businesses that perform enrollment services without an express agency relationship with a REP. However, the commission agrees with comments suggesting that the proposed language would further confuse the role of different entities with regard to customer enrollments. The commission also agrees with TEPA that 16 TAC §25.107(a)(2) allows a broker to conduct enrollment activities as a "service for a REP." Moreover, 16 TAC §25.107(a)(3) makes it clear that under current law a REP can outsource retail electric functions to a "subcontractor, agent, or any other entity." Accordingly, the commission agrees that brokers that conduct enrollment activities are not required to have an agency relationship with a REP. Because the commission's intended purpose for this section is already provided for under current law, the commission removes proposed 16 TAC §25.486(h) from the rule. The commission also declines to adopt any of the alternate language recommended by the commenters as it is unnecessary.

However, the commission disagrees that REPs are not accountable for enrollment activities conducted by brokers on their behalf. Under 16 TAC §25.107(a)(3), "[a] REP that outsources retail electric functions...remains accountable to applicable law and commission rules for all activities conducted on its behalf by any subcontractor, agent or any other entity." To the extent that a broker assumes any of the duties of a REP with regard to the enrollment process, the REP will be accountable under the rules for all activities conducted on its behalf by that broker.

With regard to the concerns of TEAM and ARM, a REP is not required to accept an enrollment conducted by a broker. It is the intention of the commission that REPs remain accountable for enrollments under 16 TAC §25.474, and REPs and brokers continue to address these issues through private agreement, as necessary.

Comments on 16 TAC §25.486(i)

TEPA argued it would be appropriate to include the modifier "unduly" in this section to conform the broker discrimination prohibitions to those applicable to REPs and aggregators. TEAM indicated that it maintains its support of this section, unmodified, but does not oppose the addition of "unduly."

Commission Response

The commission agrees that inclusion of the term "unduly" is appropriate and would align 16 TAC §25.486(i) with the discrimination prohibitions that apply to REPs and aggregators. The commission makes the recommended change.

Comments on 16 TAC §25.486(j)(1)

Oncor recommended that the commission include an additional provision in this subsection modeled after 16 TAC §25.472(b)(3), which allows a REP to request a customer or applicant's monthly usage from a TDU. This would require that, upon receiving authorization from a client, a broker must request from the TDU the monthly usage of the client's premise for the previous 12 months, and the TDU, upon receipt of a written request or other proof of authorization, must provide the requested information to the requesting broker no later than three business days after the request for proof of authorization is submitted.

Oncor explained that all four TDUs in Texas's competitive retail market have implemented automated historical usage portals. Using Oncor's REP portal, a REP that affirms it has authorization from its customers may request up to 250 ESI IDs at a time and receive the historical usage within minutes. However, because brokers are not subject to the provisions of 16 TAC §25.472(b)(3), the portal used by brokers requires them to attach a copy of the customers' signed letter of authorization rather than allow the broker to simply affirm they have authorization, as the REPs are allowed to do. Oncor also explained that in 2018, Oncor fulfilled requests for more than 360,000 ESI IDs through their automated portals, and at that volume, all process improvements are meaningful. Power Wizard supported Oncor's proposal in reply comments.

ARM filed reply comments opposing Oncor's proposed language. ARM noted that no commission rule governs how Oncor manages its portal and PURA §39.3555 does not address TDUs' provision of historical usage data to brokers. For these reasons, ARM argued that this proposal is outside the scope of this rulemaking. ARM further argued that, if anything, this should be a permissive requirement, not mandatory as Oncor proposed. ARM also argued that even though brokers are now within commission's jurisdiction, broker comments throughout this rulemaking indicate that they do not wish to be included within the full scope of the commission's customer protection rules related to retail electric service. This runs contrary to Oncor's argument in support of not requiring evidence of authority. ARM recommended that it is appropriate to continue to require that brokers submit proof of authorization from a customer to obtain that customer's historical usage data.

Commission Response

The commission declines to include a provision modeled after 16 TAC §25.472(b)(3) as requested by Oncor. The commission agrees with ARM that broker registration applications are not subject to the same level of review as REP licensing applications, nor are brokers subject to the authorization and verification requirements of 16 TAC §25.474 when enlisting clients. The commission will not mandate the release of proprietary client information by a public utility to brokers because it is not clear that the utility has the ability to verify whether the customer has authorized the release of the information.

Comments on 16 TAC §25.486(j)(1)

Verifiable Authorization to Release Customer Information

ARM requested that the commission require a broker to obtain the customer's verifiable authorization by means of one of the methods authorized in 16 TAC §25.474 prior to releasing customer information. ARM argued that this would track the language of 16 TAC §25.472(b)(1) and prevent a double standard with REPs and aggregators. TEAM supported this recommendation in reply comments.

Commission Response

The commission declines to modify 16 TAC §25.486(j) to require brokers to obtain verifiable authorization by means of one of the methods authorized in 16 TAC §25.474 prior to releasing proprietary client information. Brokers are not otherwise required to use these methods when obtaining client authorization, and it would be burdensome to require such use in this context. The commission retains the requirement that brokers obtain authorization to release proprietary client information in writing. The commission notes that under 16 TAC §25.486(k)(1)(A), brokers must maintain records to verify compliance with this requirement.

Release of Customer Information to Agents, Vendors, Partners, or Affiliates

ARM recommended adding language that would track the requirements of 16 TAC §25.472(b)(1)(B), which would provide an additional exception to the prohibition against releasing proprietary client information to agents, vendors partners, or affiliates of the broker and impose requirements related to that exception. TEAM supported ARM's suggested additions in reply comments.

Commission Response

The commission declines to adopt the additional provisions suggested by ARM related to the release of proprietary client information to an agent, vendor, partner, or affiliate of the broker. Brokers and their clients can, by private agreement and consistent with the requirements of this section, determine for what purposes the broker may release the client's proprietary client information and to whom.

Comments on 16 TAC §25.486(j)(1)(B)

TEPA urged the commission to remove proposed 16 TAC §25.486(j)(1)(B), which would allow brokers to release proprietary client information to OPUC, upon request under PURA §39.101(d). This provision of PURA requires a REP, power generation company, aggregator, or other entity that provides retail electric service to submit reports to the commission and OPUC annually and on request relating to the person's compliance with PURA §39.101. TEPA objected to granting OPUC the right to require brokers to provide confidential and proprietary information about retail electric services without customer approval. TEPA continued that brokers are not subject to the statutory provisions that establish these reporting requirements, and that using this mechanism to assert this authority for OPUC is inappropriate and inconsistent with the competitive, discretionary nature of the services offered by brokers to retail electric customers. TEPA requested that if this provision remains, it should apply only to services for residential and small commercial customers. TEPA also opposed requiring brokers to file annual reports with the commission.

In reply, OPUC argued that under PURA Chapter 13, OPUC is the independent office responsible for representing the interests of residential and small commercial consumers and is statutorily responsible for maintaining a system to promptly and efficiently act on complaints that are filed with OPUC that it has the authority to resolve. OPUC contends that it should have access to all information that is necessary to protect residential and small commercial customer interests, including proprietary customer information possessed by brokers. ARM argued in reply comments that brokers should be required to file these annual reports. ARM stated that while brokers are not specifically included on the list of entities that are statutorily required to file these reports, PURA §39.3555 specifically invokes the customer protections found in Chapters 17 and 39.

Commission Response

The commission strikes proposed 16 TAC §25.486(j)(1)(B) in response to TEPA's comments. The commission agrees with ARM that the broad language of PURA §39.3555 would allow the commission to require brokers to file annual reports and disclose proprietary customer information contained in those reports to OPUC. However, at the current time, the commission believes that requiring brokers to file an annual report would be overly burdensome to a market segment that has just come under the commission's jurisdiction.

The commission agrees that OPUC should have all the information that it needs to address residential and small commercial complaints. However, OPUC can obtain authorization from a complainant to obtain that complainant's proprietary client information as needed.

Comments on 16 TAC §25.486(j)(1)(C)

TEAM recommended that the commission modify proposed 16 TAC §25.486(j)(1)(C) to clarify that brokers can also release proprietary client information to REPs or TDUs as necessary to solicit bids under terms approved by the commission.

Commission Response

The commission declines to permit brokers to release proprietary client information to REPs or TDUs for purposes of soliciting bids without the express authorization of the client, as suggested by TEAM. Instead, the commission removes proposed 16 TAC §25.486(j)(1)(C) from the rule. It is the intent of the commission that clients authorize any release of their proprietary client information by a broker. The removal of this provision should not place an additional burden on brokers, because a broker is not prohibited from obtaining client authorization through a general release that describes, with precision, the circumstances in which a broker can release the client's proprietary client information. The commission also notes that 16 TAC 25.486(d) applies to any communications describing how a client's proprietary client information will be used must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive.

Comments on 16 TAC §25.486(j)(2)

Sale of Client-Specific Information

TEAM, ARM, and OPUC recommended that the commission prohibit the sale of client-specific information under any circumstances. TEAM argued that REPs are not allowed to sell customer-specific information and recommended language prohibiting the sale of proprietary client information. ARM recommended language prohibiting the sale of customer-specific information. In addition to recommending the prohibition on the sale of client information in reply comments, OPUC also supported the proposed rule language prohibiting the sale of customer-specific information without a customer's permission.

Commission Response

The commission declines to include a prohibition on the sale of client-specific information as requested by TEAM, ARM, and OPUC. Retail electric customers in deregulated areas of the state must interact with a REP to receive electric service. If REPs were permitted to sell customer-specific information, there would be a risk that requesting authorization to allow this sale would become an industry standard, preventing a customer from obtaining electric service

without agreeing to allow the sale of their information. Conversely, customers are not required to use brokers to obtain retail electric service. If a client elects to engage a broker and authorize the broker to sell their information, the commission will not prevent the client from doing so.

Sale of Clients Upon Broker Market Exit

RES Nation requested clarification that, when exiting the market, selling clients to another broker is not a violation of this rule. In reply comments, TEAM and ARM each opposed this suggestion. TEAM argued that this is unnecessary in the context of brokers. Because customers are not required to obtain brokerage services, there is no need for the commission to facilitate the transfer of clients to another broker and no reason why a broker should be able to sell customer-specific information to another broker under any circumstance. ARM argued that if a broker is exiting the market, it would make sense to sell the broker entity, not the individual customer's proprietary data. Furthermore, ARM continued, no such exception exists for aggregators exiting the market.

Commission Response

In response to RES Nation's request for clarification on whether, when exiting the market, selling clients to another broker is a violation of the rule, the commission clarifies that the same requirements apply in the context of a market exit as would apply otherwise. With regard to the sale of proprietary client information, a broker must first obtain consent from the client in writing. The commission also notes that any transfer of a client to a different broker would trigger the required disclosure requirements of 16 TAC §25.486(f) and the requirements of 16 TAC §25.486(g) if the broker is a client agent.

The commission agrees with TEAM that brokerage services are not essential, and the commission does not need to provide a process for the transfer of clients upon a broker market exit. However, the commission will not prohibit brokers and clients from including terms in their private agreements that provide for this outcome, so long as the terms are consistent with PURA and the commission's rules.

Comments on 16 TAC §25.486(k)

ARM recommended restyling this subsection from "customer service" to "customer access" for consistency with 16 TAC §25.485.

Commission Response

The commission agrees that ARM's proposed edit would provide consistency with 16 TAC §25.485. The commission restyles this subsection "Client Access and Complaint Handling."

Comments on 16 TAC §25.486(k)(1)

Access to Customer Service Representatives

Electricity Ratings argued that brokers generally do not have access to client bills or the ability to terminate REP services unless the broker is a client agent. Accordingly, Electricity Ratings requested that the commission modify this provision to only require client agents to provide customer access to customer service representatives to discuss bills and the termination of REP service. Electricity Ratings also requested the commission clarify that brokers who are not client agents are only required to provide client access to customer service representatives to discuss termination of service agreements with the broker.

TEPA filed reply comments in support of Electricity Ratings's proposed modifications regarding the termination of brokerage service agreements. However, in reference to Electricity Ratings's proposal that only client agents must provide client access to discuss bills and the termination of REP service, TEPA pointed out that no provisions exist in PURA §39.3555 that provide the basis for distinguishing treatment for different types of registered brokers. Accordingly, TEPA opposed the suggested addition of new language intended to authorize limited and specific actions for which a broker not need a grant of authority in the rules.

Commission Response

The commission agrees with Electricity Ratings that brokers should be required to provide clients access to customer service representatives to discuss the termination of agreements to provide brokerage services. The commission makes the recommended change.

The commission declines to adopt the client agent related language that Electricity Ratings recommends. Instead, the commission adds broader language requiring a broker to provide reasonable access to its service representatives to discuss charges on bills or any other aspect of the brokerage services provided to the client by the broker.

Complaints Submitted to Broker

TEAM stated that it is unclear when the broker must inform the client of the commission's complaint process. It suggested adding it to the initial disclosures to the client and to any communication regarding an unresolved complaint brought to the broker by a client.

Commission Response

The commission declines to adopt TEAM's recommendation that a broker be required to provide information regarding the commission's informal complaint resolution process as part of the initial disclosures and as a part of every communication with a client with a pending complaint, as this could be burdensome if the broker and client have multiple communications regarding a complaint. Instead, the commission adds a requirement that the broker provide information to the client regarding the commission's informal complaint resolution process within 21 days of receiving the complaint.

ARM recommended adding a deadline of 21 days for a broker to investigate client complaints and advise the complainant of the results.

Commission Response

The commission declines to require a broker to complete its own internal complaint investigation process within 21 days, as recommended by ARM. The requirement for brokers to provide the complainant with information regarding the commission's informal complaint resolution process within 14 days provides sufficient customer protections.

Comments on 16 TAC §25.486(k)(3)

ARM recommends that the commission replace "may not" with "must not" to clarify that a broker must not use a written or verbal agreement with a client to impair the right of a residential or small commercial customer to file a complaint.

Commission Response

The commission agrees with ARM that a broker must not use a written or verbal agreement with a client to impair the right of a residential or small commercial customer to file a complaint and makes the recommended change.

Debt Collection During Pendency of an Informal Complaint

ARM suggested adding an additional provision prohibiting debt collection or reporting to a credit agency during the pendency of an informal complaint. TEAM supported this proposal in reply comments and argued that this proposal complements proposed 16 TAC §25.112(g), which lists unauthorized charges as a significant violation.

Commission Response

The commission has added a provision prohibiting the initiation of collection activities, including a report of a customer's delinquency to a credit reporting agency, with respect to the disputed portion of the bill, during the pendency of an informal complaint. Under 16 TAC §22.272(d), commission staff must attempt to informally resolve all complaints within 35 days, making this a sensible customer protection relative to the minor burden it imposes on brokers.

Comments on 16 TAC §25.486(k)(3)(B)

ARM pointed out that some of the information required by this subsection may not be available if a complaint is initiated against an unregistered broker or before a customer receives an electric service identifier. ARM recommended the commission add "if any" to 16 TAC §§25.486(k)(3)(B)(iii) and (v).

Commission Response

The commission declines to make changes based upon this comment. Under 16 TAC §25.486(k)(3)(B), a complaint should include the listed information *as applicable.* If a broker does not have a registration number or a customer does not yet have an electric service identifier, then these pieces of information are not applicable. Moreover, the purpose of this list is to assist commission staff in processing complaints as efficiently as possible. Commission staff endeavors to process each informal complaint it receives, even if the complainant cannot provide each of the listed items.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.112

Statutory Authority

These new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code §14.002 (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.3555, which requires entities that provide brokerage services in this state to register as brokers with the commission and to comply with customer protection provisions established by the commission and Chapters 17 and 39 of PURA and which requires the commission to adopt rules as necessary to implement the section.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §39.3555.

§25.112 Registration of Brokers.

(a) Registration required. A person must not provide brokerage services, including brokerage services offered online, in this state for compensation or other consideration unless the person is registered with the commission as a broker. A broker is responsible for all activities conducted on its behalf by any subcontractor or agent. A retail electric provider (REP) is not permitted to register as a broker and must not knowingly provide bids or offers to a person who provides brokerage services in this state for compensation or other consideration and is not registered as a broker. A REP may rely on the publicly available list of registered brokers posted on the commission's website to determine whether a broker is registered with the commission.

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

(1) Broker--A person that provides brokerage services.

(2) Brokerage services--Providing advice or procurement services to, or acting on behalf of, a retail electric customer regarding the selection of a REP, or a product or service offered by a REP.

(c) Requirements for a person seeking to register as a broker. A person seeking to register under this section must provide the information listed in this subsection.

(1) All business names of the registrant limited to five business names;

(2) The mailing address, telephone number, and email address of the principal place of business of the registrant;

(3) The name, title, business mailing address, telephone number, and email address for the registrant's commission contact person;

(4) The name, title, business mailing address, telephone number, and email address of the registrant's customer service contact person;

(5) The name, title, business mailing address, telephone number, and email address of the registrant's commission complaint contact person;

(6) The form of business being registered (e.g., corporation, partnership, or sole proprietor); and

(7) An affidavit from the owner, partner, or officer of the registrant affirming that the registrant is authorized to do business in Texas under all applicable laws and is in good standing with the Texas Secretary of State; that all statements made in the application are true, correct, and complete; that any material changes in the information will be provided in a timely manner; and that the registrant understands and will comply with all applicable law and rules.

(d) Registration procedures. The following procedures apply to a person seeking to register as a broker:

(1) A registration application must be made on the form approved by the commission, verified by notarized oath or affirmation, and signed by an owner, partner, or officer of the registrant. The form may be obtained from the central records division of the commission or from the commission's Internet site. Each registrant must file its registration application form with the commission's filing clerk in accordance with the commission's procedural rules.

(2) The registrant must promptly inform the commission of any material change in the information provided in the registration application while the application is being processed.

(3) An application will be processed as follows:

(A) Commission staff will review the submitted form for completeness. Within 20 working days of receipt of an application, the commission staff will notify the registrant by mail or e-mail of any deficiencies in the application. The registrant will have ten working days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten working days, commission staff will notify the registrant that the registration application is rejected without prejudice.

(B) Commission staff will determine whether to accept or reject the application within 60 days of the receipt of a complete application.

(C) An applicant may contest commission staff's rejection of its application by filing a petition for formal review of the registration application in accordance with the commission's procedural rules. The registrant has the burden of proof to establish that its application meets the requirements of PURA and commission rules.

(e) Registration Update. Unless updated, a broker registration expires three years after the date of the assignment of a broker registration number or the registration's most recent update. Each registrant must submit the information required to update its registration with the commission not less than 90 days prior to the expiration date of the current registration. An expired registration is no longer valid, and the broker will be removed from the broker list on the commission's website.

(f) Registration Amendment. A broker must amend its registration to reflect any changes in the information previously submitted, including business name, mailing address, email address, or telephone number within 30 calendar days from the date of the change. This amendment is an update under (e) of this section.

(g) Suspension and Revocation of Registration and Administrative Penalty. The commission may impose an administrative penalty for violations of PURA or commission rules. The commission may also suspend or revoke a broker's registration for significant violations of PURA or commission rules. Significant violations include, but are not limited to, the following:

(1) providing false or misleading information to the commission;

(2) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(3) a pattern of failure to meet the requirements of PURA, commission rules, or commission orders;

(4) failure to respond to commission inquiries or customer complaints in a timely fashion;

(5) switching or causing to be switched the REP of a customer without first obtaining the customer's authorization; or

(6) billing an unauthorized charge or causing an unauthorized charge to be billed to a customer's retail electric service bill.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §25.486

Statutory Authority

These new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code §14.002 (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.3555, which requires entities that provide brokerage services in this state to register as brokers with the commission and to comply with customer protection provisions established by the commission and Chapters 17 and 39 of PURA and which requires the commission to adopt rules as necessary to implement the section.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §39.3555.

§25.486. Customer Protections for Brokerage Services.

(a) Applicability. This section applies to all brokers.

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

(1) Broker--As defined in §25.112 of this title (relating to Registration of Brokers).

(2) Brokerage services--As defined in §25.112 of this title.

(3) Client--A person who receives or solicits brokerage services from a broker.

(4) Client agent--A broker who has the legal right and authority to act on behalf of a client regarding the selection of, enrollment for, or contract execution of a product or service offered by a retail electric provider (REP), including electric service.

(5) Proprietary client information--Any information that is compiled by a broker on a client or retail electric customer that makes possible the identification of any individual client or retail electric customer by matching such information with the client's or customer's name, address, retail electric account number, type or classification of retail electric service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual retail electric or brokerage services contract terms and conditions, price, current charges, billing records, or any information that the client or customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the client or customer to whom the information relates does not constitute proprietary client information.

(c) Voluntary Alteration of Customer Protections. A client other than a residential or small commercial class customer or applicant, or a non-residential customer or applicant whose load is part of an aggregation in excess of 50 kilowatts, may agree to a different level

of customer protections related to the provision of brokerage services than is required by this section. Any such agreements do not change the level of customer protections a client is entitled to relating to the provision of retail electric service. Any agreements containing a different level of protections from those required by this section must be in writing and provided to the client. Copies of such agreements must be provided to commission staff upon request.

(d) Broker Communications.

(1) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, and billing statements produced by a broker must be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to:

(A) Stating, suggesting, implying or otherwise leading a client to believe that receiving brokerage services will provide a customer with more reliable service from a transmission and distribution utility (TDU);

(B) Falsely suggesting, implying or otherwise leading a client to believe that a person is a representative of a TDU, REP, aggregator, or another broker;

(C) Falsely stating or suggesting that brokerage services are being provided without compensation; and

(D) Falsely claiming to be the client agent of a customer or applicant.

(2) All printed advertisements, electronic advertising over the Internet, and websites must include the broker's registered name.

(e) Language Requirements. A broker must offer customer service and any information required by this section to a client in the language used to market the broker's products and services to that client.

(f) Required Disclosures. A broker must inform a client of the following prior to the initiation of brokerage services, the renewal of those services, or a material change in the services provided, or the terms and conditions of those services:

(1) The broker's registered name, business mailing address, and contact information;

(2) The broker's commission registration number;

(3) The registered name of any REP that is an affiliate of the broker;

(4) A clear description of the services the broker will provide for the client;

(5) The duration of the agreement to provide brokerage services, if applicable;

(6) A description of how the broker will be compensated for providing brokerage services and by whom;

(7) How the client can terminate the agreement to provide brokerage services, if applicable;

(8) The amount of any fee or other cost the client will incur for terminating the agreement to provide brokerage services, if applicable; and

(9) The commission's telephone number and email address for complaints and inquiries.

(g) Client Agent Requirements.

(1) An agreement between a broker and a client that authorizes the broker to act as a client agent for the client must be in writing.

(2) In addition to the requirements of subsection (f) of this section, a broker that acts as a client agent for the client must inform the client of the following:

(A) A clear description of the actions the broker is authorized to take on the client's behalf;

(B) The duration of the agency relationship;

(C) How the client can terminate the agency agreement;

(D) The amount of any fee or other cost the client will incur for terminating the agency agreement; and

(E) How the client's customer data, including proprietary client information, and account access information will be used, protected, and retained by the broker and disposed of at the conclusion of the agency relationship.

(3) A broker that is authorized to act as a client agent for the client must provide evidence of that authority upon request of the client, commission staff, or a REP with which the broker seeks to enroll the client.

(4) For purposes of §25.474 of this title (relating to Selection of Retail Electric Provider), a REP may rely upon the representations made by a client agent provided that the client agent is registered with the commission and provides evidence of agency authority.

(h) Unauthorized Charges and Unauthorized Changes of Retail Electric Provider.

(1) Unauthorized charges. A broker must not bill an unauthorized charge or cause an unauthorized charge to be billed to a customer's retail electric service bill.

(2) Unauthorized service changes. A broker must not switch or cause to be switched the REP of a customer without first obtaining the customer's authorization.

(i) Discrimination Prohibited. A broker must not unduly refuse to provide brokerage services or otherwise unduly discriminate in the provision of brokerage services to any client because of race, creed, color, national origin, ancestry, sex, marital status, source or level of income, disability, or familial status; or refuse to provide brokerage services to a client because the client is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services; or otherwise unreasonably discriminate on the basis of the geographic location of a client.

(j) Proprietary Client Information.

(1) A broker must not release proprietary client information to any person unless the client authorizes the release in writing. This prohibition does not apply to the release of such information to the commission.

(2) A broker is not permitted to sell, make available for sale, or authorize the sale of any client-specific information or data obtained unless the client authorizes the sale in writing.

(k) Client Access and Complaint Handling.

(1) Client Access. Each broker must ensure that clients have reasonable access to its service representatives to make inquiries and complaints, discuss charges on bills or any other aspect of the brokerage services provided to the client by the broker, terminate an agreement to provide services, and transact any other pertinent business. A broker must promptly investigate client complaints and advise the complainant of the results. A broker must inform the com-

plainant of the commission's informal complaint resolution process and the following contact information for the commission within 21 days of receiving the complaint: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(2) Complaint Handling. A client has the right to make a formal or informal complaint to the commission. A broker may not use a written or verbal agreement with a client to impair this right for a client that is a residential or small commercial customer. A broker must not require a client that is a residential or small commercial customer to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

(3) Informal Complaints.

(A) A person may file an informal complaint with the commission by contacting the commission at: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet website address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989.

(B) A complaint should include the following information, as applicable:

(i) The complainant's name, billing and service address, telephone number and email address, if any;

(ii) The name of the broker;

(iii) The broker's registration number;

(iv) The name of any relevant REP;

(v) The customer account number or electric service identifier;

(vi) An explanation of the facts relevant to the complaint;

(vii) The complainant's requested resolution; and

(viii) Any documentation that supports the complaint.

(C) The commission will forward the informal complaint to the broker.

(D) The broker must investigate each informal complaint forwarded to the broker by the commission and advise the commission in writing of the results of the investigation within 21 days after the complaint is forwarded to the broker by the commission.

(E) The commission will review the complaint information and the broker's response and notify the complainant of the results of the commission's investigation.

(F) The broker must keep a record for two years after receiving notification by the commission that the complaint has been closed. This record must show the name and address of the complainant, the date, nature, and outcome of the complaint.

(G) While an informal complaint process is pending, the broker must not initiate collection activities, including a report of the customer's delinquency to a credit reporting agency, with respect to the disputed portion of the bill.

(4) Formal Complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission within two years of the date on which the commission closes the informal complaint. Formal complaints will be docketed as provided in the commission's procedural rules.

(l) Record Retention.

(1) A broker must establish and maintain records and data that are sufficient to:

(A) Verify its compliance with the requirements of any applicable commission rules; and

(B) Support any investigation of customer complaints.

(2) All records required by this section must be retained for no less than two years, unless otherwise specified.

(3) Unless otherwise prescribed by the commission or its authorized representative, all records required by this subchapter must be provided to the commission within 15 calendar days of its request.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§230.21, 230.33, 230.36, 230.55, 230.104, and 230.105, concerning professional educator preparation and certification. The amendment to §230.21 is adopted with changes to the proposed text as published in the January 3, 2020 issue of the *Texas Register* (45 TexReg 58) and will be republished. The amendments to §§230.33, 230.36, 230.55, 230.104, and 230.105 are adopted without changes to the proposed text as published in the January 3, 2020 issue of the *Texas Register* (45 TexReg 58) and will not be republished. The amendments implement the statutory requirements of Senate Bill (SB) 1839 and House Bills (HBs) 2039 and 3349, 85th Texas Legislature, Regular Session, 2017, and HB 3, 86th Texas Legislature, 2019. The amendment to Subchapter C, Assessment of Educators, reduces the amount of time for computer- and paper-based examination retakes from 45 to 30 days and updates the figure specifying the required test for issuance of the standard certification, including the removal of the master teacher certification class and the Principal: Early Childhood-Grade 12 certificate and the addition of

Early Childhood-Grade 3 (EC-3), Science of Teaching Reading, and Trade and Industrial Workforce Training. The amendment to Subchapter D, Types and Classes of Certificates Issued, requires the English as a Second Language Supplemental assessment for issuance of an intern certificate obtained through the intensive pre-service route. The amendment to Subchapter E, Educational Aide Certificate, allows the Educational Aide I certificate to be issued to high school students who have completed certain career and technical education courses. Changes to Subchapter G, Certificate Issuance Procedures, clarify that requests for certificate corrections be submitted to the Texas Education Agency (TEA) within six weeks from the original date of issuance. The changes also implement the requirement specified in statute that certified classroom teachers must complete training prior to receiving test approval for the Early Childhood: Prekindergarten-Grade 3 certificate. The SBEC made changes to the proposed text in Figure: 19 TAC §230.21(e) in response to public comment and to revert text for future rulemaking.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 230 specify the testing requirements for certification and the additional certificates based on examination. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas. The following provides a description of changes to Chapter 230, Subchapters C, D, E, and G.

Subchapter C, §230.21. Assessment of Educators

The adopted amendment to §230.21(a)(1)(D) reduces the amount of time between computer- and paper-based retakes from 45 days to 30 days. The adopted amendment is in response to stakeholder feedback from the July 2019 SBEC meeting and allows candidates an additional testing window in the summer to meet certification requirements.

Additionally, the adopted amendment to §230.21(e) amends Figure: 19 TAC §230.21(e) to remove §241.60, Principal: Early Childhood-Grade 12, as new principal certifications were created, effective December 23, 2018; to comply with HB 3 by removing all master teacher certificates from the current list of active certifications; to comply with HB 3 by adding 293 Science of Teaching Reading TExES as a required content pedagogy test for the §233.2, Early Childhood: Prekindergarten-Grade 3 certification; to comply with SB 1839 and HB 2039 to create the required assessments for the §233.2, Early Childhood: Prekindergarten-Grade 3 certification; and to comply with HB 3349 to create the required assessments for the new §233.14, Trade and Industrial Workforce Training: Grades 6-12 certification, along with providing for a transition from the current content tests to the anticipated content pedagogy tests as follows:

Figure 1: 19 TAC Chapter 230 - Preamble

At the February 21, 2020 meeting, the SBEC took action to revert the following proposed amendments to §230.21(e) to allow staff more time to work through transition dates to bring back for the SBEC's consideration at the May 1, 2020 meeting. To comply with HB 3, requiring educators who teach any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021, the proposed amendments would have added 293 Science of Teaching Reading TExES as a required content pedagogy test for the following certifications: §233.2, Core Subjects: Early Childhood-Grade 6; §233.2, Core Subjects: Grades 4-8; §233.3, English Language Arts and Reading: Grades 4-8; §233.3, English Language Arts and Reading/Social Studies: Grades 4-8.

Further, the proposed amendments to Figure §230.21(e) would have phased out retired assessments by removing the retired 183 Braille TExES assessment for the §233.8, Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certification and would have provided for a transition from the current content tests to the anticipated content pedagogy tests for §233.12, Physical Education: Early Childhood-Grade 12; §233.3, English Language Arts and Reading: Grades 4-8; and §233.2, Core Subjects: Early Childhood-Grade 6, as follows:

Figure 2: 19 TAC Chapter 230 - Preamble

Subchapter D, §230.33, Classes of Certificates, and §230.36, Intern Certificates

The adopted amendment to §230.33(b)(5) aligns with the mandate in HB 3 to repeal the master teacher certificate class, giving those certificates contained therein a "legacy" designation for educator assignment purposes until they expire.

The adopted amendment to §230.36(f)(2)(C) adds the requirement of the English as Second Language (ESL) Supplemental assessment for issuance of the intern certificate through the intensive pre-service route. This will ensure teachers are ready to serve students in their classroom.

Subchapter E, §230.55. Certification Requirements for Educational Aide I

TEA staff in the divisions of Educator Certification, Instructional Support, and Career and Technical Education are working collaboratively to support the work associated with industry-based certifications. Industry certifications were designed to prepare students for success in postsecondary endeavors and are used for public school accountability.

The adopted amendment to §230.55 adds the word "either" to provide two possible paths to qualify for an Educational Aide I certificate: a path for conventional high school graduates and an alternate path for high school students 18 years of age or older to attain educational industry experience while still in school. The alternate path to certification in adopted new §230.55(3) and (4) allows students to earn Educational Aide I credentials after completing career and technical education courses and allows schools to accurately reflect these students as "career ready" in their accountability measures.

Subchapter G, §230.104. Correcting a Certificate or Permit Issued in Error and §230.105. Issuance of Additional Certificates Based on Examination

The adopted amendment to §230.104(b) adds the requirement that if an entity incorrectly issues a certificate, TEA must receive a request to correct the error from the entity within six weeks. The adopted change also requires educators to inform the recommending educator preparation program (EPP) of any assignment change that would require the educator to be certified in a different certification area. This will ensure teachers are teaching in their correct assignments. The adopted amendment also applies to supplemental certifications, such as the Early Childhood-Grade 12 ESL certification, to ensure candidates are prepared to teach the students they serve.

The adopted amendment to §230.105(3) complies with SB 1839 and HB 2039 to mandate all candidates complete training re-

quirements for issuance of an Early Childhood: Prekindergarten-Grade 3 certification. Remaining paragraphs are renumbered.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began January 3, 2020, and ended February 3, 2020. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 21, 2020 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: Nine individuals commented in support of proposed §230.55(3) and (4), which would allow students to earn Educational Aide I credentials after completing career and technical education courses. The commenters cited the benefit to students of being able to work while furthering their education and the benefit to school districts in staffing and for accountability purposes.

Board Response: The SBEC agrees. The SBEC believes the amendment would provide high school students the opportunity to attain educational industry experience while still in school and would allow school districts to accurately reflect these students as "career ready" in their accountability measures.

Comment: The Association of Texas Professional Educators and the Texas Association of Future Educators suggested lowering the age requirement for the Educational Aide I certificate from 18 years old to 17 years old, citing students who graduate and are not 18 years old until after the end of their senior year of high school.

Board Response: The SBEC disagrees. The SBEC rule in §230.11(b)(1) requires that all applicants for a Texas educator certificate be at least 18 years of age to ensure that only those legally considered adults are held accountable for the oversight of children. The rule would allow high school students to obtain the required training while taking high school classes, thereby allowing the students to receive certification as soon as they turn 18 years old.

Comment: Three Texas administrators commented in support of the proposed amendment to §230.21(a)(1)(D) that would reduce the time a candidate must wait between examination re-tests from 45 to 30 days.

Board Response: The SBEC agrees. The amendment is responsive to stakeholder input requesting the reduction of time between re-tests and would allow candidates an additional testing window to meet certification requirements.

Comment: One Texas administrator commented in opposition to the proposed amendment that would add the assessments for the Early Childhood-Grade 3 certification, stating that this would cause staffing issues, potential additional costs to the district, and potential disruption to the classrooms. Additionally, the commenter stated that a test does not determine a good teacher or expert in the field.

Response: The SBEC disagrees. The Texas Legislature mandated the creation of a new certificate for Early Childhood: Prekindergarten-Grade 3. Additionally, the current certificate for Core Subjects: Early Childhood-Grade 6 is still in place to provide certification and employment flexibility for candidates and districts.

Regarding the comment on utility of certification examinations for certification purposes, the SBEC disagrees. In §230.11(b)(6), all applicants for Texas certification must pass the appropriate certification examination that reflects the appropriate SBEC educator standards and the Texas Essential Knowledge and Skills. Certification examinations, along with pre-service training, field-based experiences, and clinical experiences, play a role in determining a candidate's readiness to serve as a Texas educator.

Comment: One Texas administrator commented that the Performance Assessment for School Leaders (PASL) examination be offered more often.

Response: The comment is outside the scope of the proposed rulemaking. The TEA staff will consider this feedback for testing options with the testing vendor.

Comment: One Texas teacher commented in opposition of removing Early Childhood-Grade 12 (EC-12) certifications because it would deny excellent teachers with opportunities to teach in multiple grade levels.

Response: The comment is outside the scope of the proposed rulemaking. The only EC-12 certificates being removed as part of this rulemaking are the Principal: Early Childhood-Grade 12 certificate, due to a new EC-12 certificate, and the master teacher certificates, due to HB 3, 86th Texas Legislature, 2019, that requires the SBEC to no longer issue master teacher certificates. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual requested clarification on the transition plan for some of the changing exams, such as the Physical Education (PE) EC-12 content exam, which will no longer be offered after August 31, 2021. The commenter asked if the old exam will still allow candidates to become certified for one year after the exam change occurs to prevent candidates from having to take both the old and new exams. The commenter suggested that candidates who previously passed the expiring PE EC-12 content exam be given until August 31, 2022, to complete all certification requirements and become standard certified.

Response: The comment is outside the scope of the proposed rulemaking. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual requested clarification regarding the appropriate Braille examination(s) in the proposed amendment to Figure §230.21(e) that are required for issuance of the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate. The commenter pointed out that the current reference is confusing as to which examination(s) are appropriate for issuance.

Response: The SBEC agrees. The language in the proposed amendment to Figure §230.21(e) regarding the appropriate examinations for the Visually Impaired Supplemental certificate was confusing. The SBEC took action to revert the language in the amendment to allow TEA staff the opportunity to correct the technical errors and bring back the correct references to the Braille examination at the May 1, 2020 SBEC meeting.

Comment: One individual commented that the content certification examination no longer meets the requirements of TEC, §21.048, as of January 2020.

Response: The comment is outside the scope of the proposed rulemaking, but the SBEC offers the following clarification. The content certification examination, Pre-Admission Content Test (TX PACT), governed by TEC, §21.0441, is used to measure the content readiness of potential teacher candidates for the pur-

pose of admission to an EPP. The content pedagogy examination, Texas Examination of Educator Standards (TExES), governed by TEC, §21.048, is used to measure teacher candidate readiness for certification issuance.

The State Board of Education (SBOE) took no action on the review of amendments to §§230.21, 230.33, 230.36, 230.55, 230.104, and 230.105 at the April 17, 2020 SBOE meeting.

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC) §21.041(b)(1), (2), and (4), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a) as amended by Senate Bills (SB) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which states that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.050(a), which states that a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), as amended by House Bill (HB) 3217, 86th Texas Legislature, 2019, which states that the SBEC shall provide for a minimum number of semester credit hours for field-based experience or internship; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; TEC, §22.064, as amended by HB 3, 86th Texas Legislature, 2019, which requires the SBEC to designate all Master Teacher certificates as Legacy Master Teacher; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under TEC, Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states that a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a), as amended by Senate Bills (SB) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; 21.048, as amended by HB 3, 86th Texas Legislature, 2019; 21.050(a); 21.050(b), as amended by House Bill (HB) 3217, 86th Texas Legislature, 2019; 21.050(c); 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; 22.064, as amended by HB 3, 86th Texas Legislature, 2019; 22.082; and Texas Occupation Code, §54.003.

§230.21. Educator Assessment.

(a) A candidate seeking certification as an educator must pass the examination(s) required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by the TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Early Childhood; Core Subjects).

(A) A canceled examination score is not considered an examination retake.

(B) An examination taken by an educator during a pilot period is not considered part of an educator's five-time test attempt limit.

(C) Pursuant to TEC, §21.0491(d), the limit on number of test attempts does not apply to the trade and industrial workforce training certificate examination prescribed by the SBEC.

(D) A candidate who fails a computer- or paper-based examination cannot retake the examination before 30 days have elapsed following the candidate's last attempt to pass the examination.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing, and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing, and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing, and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing, and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination

may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals), or an approved educator preparation program (EPP), pursuant to §228.10 of this title (relating to Approval Process); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

(iii) the name of the educational activity;

(iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of $160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 45 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in the TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent denied waiver of the limitation request; or

(iii) 180 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection.
Figure: 19 TAC §230.21(e)

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification.

(g) The following provisions concern ethical obligations relating to examinations.

(1) An educator or candidate who participates in the development, design, construction, review, field testing, scoring, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator or candidate who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator or candidate who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(4) An educator, candidate, or other test taker shall not:

(A) solicit information about the contents of test items on an examination that the educator, candidate, or other test taker has not already taken from an individual who has had access to those items, or offer information about the contents of specific test items on an examination to individuals who have not yet taken the examination;

(B) fail to pay all test costs and fees as required by this chapter or the testing vendor; or

(C) otherwise engage in conduct that amounts to violations of test security or confidentiality integrity, including cheating, deception, or fraud.

(5) A person who violates this subsection is subject to:

(A) sanction, including, but not limited to, disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession, in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and/or

(B) denial of certification in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title; and/or

(C) voiding of a score from an examination in which a violation specified in this subsection occurred as well as a loss of a test attempt for purposes of the retake limit in 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.

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Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §230.33, §230.36

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC) §21.003(a); which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.031(b), which states that the SBEC shall ensure that all candidates for certification or renewal of certification should demonstrate the knowledge and skills necessary to improve the performance of a diverse student population; TEC, §21.041(b)(1)-(5), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and requires the SBEC to propose rules that include requirements for educators that hold a similar certification issued by another state or foreign country; TEC, §21.041(b)(9), which requires the SBEC to propose rules for the regulation of continuing education requirements; TEC, §21.051, as amended by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; TEC, §22.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which requires the SBEC to designate all Master Teacher certificates as Legacy Master Teacher; TEC, §22.0831(c), which requires SBEC to review the national criminal history of a person seeking certification; and TEC, §22.0831(f)(1) and (2), which state that SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031(a); 21.031(b); 21.041(b)(1)-(5) and (9); 21.051, as amended by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017; 22.064, as amended by House Bill 3, 86th Texas Legislature, 2019; 22.0831(c); and TEC, §22.0831(f)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. EDUCATIONAL AIDE CERTIFICATE

19 TAC §230.55

STATUTORY AUTHORITY. The amendment implements Texas Education Code (TEC), §21.041(a), which states that the board may adopt rules as necessary for its own procedures; and TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid.

CROSS REFERENCE TO STATUTE. The amendment is adopted under Texas Education Code (TEC) §§21.041(a) and (b)(1)-(4).

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SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.104, §230.105

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1)-(5), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and requires the SBEC to propose rules that include requirements for educators that hold a similar certification issued by another state or foreign country; TEC, §21.041(b)(9), which requires the SBEC to propose rules for the regulation of continuing education requirements; TEC, §21.041(c), which states that the SBEC may adopt fees for the issuance and maintenance of an educator certification to adequately cover the cost of the administration; TEC, §21.044(a), as amended by SBs 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(e), which states that in proposing rules under this section for a person to obtain a certificate to teach a health science technology education course, the board shall specify that a person must have: (1) an associate degree or more advanced degree from an accredited institution of higher education; (2) current licensure, certification, or registration as a health professions practitioner issued by a nationally recognized accrediting agency for health professionals; and (3) at least two years of wage-earning experience utilizing the licensure requirement; TEC, §21.044(f), which states that the SBEC may not propose rules for a certificate to teach a health science technology education course that specifies that a person must have a bachelor's degree or that establish any other credential or teaching experience requirements that exceed the requirements under Subsection (e); TEC, §21.048, as amended by HB 3, 86th Texas Legislature, 2019, which states that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0489, which specifies the issuance requirements for the Early Childhood: Prekindergarten-Grade 3 certification; TEC, §21.050(a), which states that a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), as amended by HB 3217, 86th Texas Legislature, 2019, which states that the SBEC shall provide for a minimum number of semester credit hours for field-based experience of internship; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; TEC, §22.0831(c), which requires SBEC to review the national criminal history of a person seeking certification; TEC, §22.0831(f)(1) and (2), which state that SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements; and Texas Occupations Code, §53.105,

which states that a licensing authority may require a fee that is in an amount sufficient to cover the cost of administration.

CROSS REFERENCE TO STATUTE. The amendments are adopted under Texas Education Code (TEC) §§21.031(a); 21.041(b)(1)-(5) and (9) and (c); 21.044(a), as amended by SBs 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; (e), and (f); 21.048, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; 21.0485; 21.0489; 21.050, as amended by House Bill (HB) 3217, 86th Texas Legislature, 2019; 21.054(a), as amended by SBs 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017, and HB 2424, 86th Texas Legislature, 2019; 22.082; and 22.0831(c) and (f); and Texas Occupations Code, §53.105.

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.2

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.2, relating to *Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions* without changes to the proposed text published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1938). The rules will not be reprinted.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.2511 and §301.151. The adopted amendments require applicants to submit fingerprints for a complete criminal background check prior to licensure, in compliance with the Occupations Code §301.2511, and eliminate subsection (f) of the section because military programs, like the U.S. Army Practical Nurse Course, are reviewed and approved by the Board in the same manner as all other nursing programs. Further, military courses other than the U.S. Army Practical Nurse Course are approved by the Board.

How the Section Will Function. Adopted §217.2(a)(5) clarifies that applicants for initial licensure by examination must submit fingerprints for a complete criminal background check. Section 217.2(f) is eliminated from the section in its entirety.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.2511 and §301.151.

Section 301.2511(a) provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirement of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 §217.3

The Texas Board of Nursing (Board) adopts amendments to §217.3, relating to Temporary Authorization to Practice/Temporary Permit, without changes to the proposed text published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1939). The rule will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.2511, §301.252(a), and §301.151.

First, the adopted amendments require new graduates seeking temporary authorization to practice as a graduate nurse or graduate vocational nurse to submit fingerprints for a complete criminal background check prior to licensure, in compliance with the Occupations Code §301.2511, and pass the jurisprudence

exam, in compliance with the Occupations Code §301.252, prior to receiving a graduate nurse or graduate vocational nurse permit. Graduate nurses who are issued graduate permits may practice nursing if appropriately supervised. As such, the public needs to be assured that these nurses have undergone background checks to ensure safe practice and have demonstrated competency by passing the Board's jurisprudence and ethics exam.

Second, the adopted amendments make non-substantive changes to paragraph (3) to increase the readability of the paragraph.

Third, the adopted amendments clarify that a temporary permit may be re-issued if a nurse is unable to complete requirements that are necessary for the nurse's licensure reinstatement within a six-month period. Due to an individual's performance pace, it may take a nurse longer than six months to complete requirements necessary for licensure reinstatement. The intent of §217.3(c) is to provide a mechanism for nurses to demonstrate their competency to return to nursing practice. Since these nurses cannot practice nursing until they complete the Board's requirements, they pose no risk of harm to the public during this time. The adopted amendment merely allows the nurse a sufficient amount of time to re-establish current licensure after demonstrating he/she is safe and competent to do so. Further, this change is consistent with recent amendments to §217.3(b) that were adopted by the Board on January 27, 2020.

How the Sunction Will Function. Adopted §217.3(a)(1) corrects a typographical error. Adopted §217.3(a)(1)(E) requires individuals seeking temporary authorization to practice to submit fingerprints for a complete criminal background check prior to receipt of the permit. Adopted §217.3(a)(1)(F) requires individuals seeking temporary authorization to practice to obtain a passing score on the jurisprudence exam approved by the Board, effective September 1, 2009, prior to receipt of the permit. Adopted §217.3(a)(3) clarifies that a new graduate who has been authorized to practice nursing as a graduate vocational nurse pending the results of the licensing examination must work under the direct supervision of a licensed vocational nurse or a registered nurse who is physically present in the facility or practice setting and who is readily available to the graduate vocational nurse for consultation and assistance. Further, a new graduate who has been authorized to practice nursing as a graduate nurse pending the results of the licensing examination must work under the direct supervision of registered nurse who is physically present in the facility or practice setting and who is readily available to the graduate nurse for consultation and assistance. Adopted §217.3(c) clarifies that a permit may be renewed beyond six months.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.2511, §301.252(a), and §301.151.

Section 301.2511(a) provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirement of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Section 301.252(a) provides that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant: (1) has good professional character related to the practice of nursing; (2) has successfully completed a program of professional or vocational nursing education approved under §301.157(d); and (3) has passed the jurisprudence examination approved by the Board as provided by subsection (a-1).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-6822

22 TAC §217.6

The Texas Board of Nursing (Board) adopts amendments to 22 TAC §217.6, relating to Failure to Renew License, without changes to the proposed text published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1947). The rule will not be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Occupations Code §301.301(d) and §301.151. Board Rule 217.6(b) addresses the licensure renewal of a nurse who is not currently practicing nursing and who has failed to maintain current licensure from any licensing authority for four or more years. The rule currently sets out the criteria that an individual must meet in order to renew his/her license under these circumstances. Among the various requirements, an individual must currently complete the online Texas Board of

Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course *in addition to* completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act, Rules, Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The adopted amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refresher course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to renewal of licensure.

How the Section Will Function. Adopted §217.6(b)(3) is eliminated from the section. The remaining amendments re-number the section accordingly.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.301(d) and §301.151.

Section 301.301(d) provides that the Board by rule shall set a length of time beyond which an expired license may not be renewed. The Board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the Board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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 §217.8

The Texas Board of Nursing (Board) adopts the repeal of 22 TAC §217.8, relating to Duplicate or Substitute Credentials, without changes to the proposed text published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1948). The repeal will not be republished.

Reasoned Justification. The repeal is adopted under the authority of the Occupations Code §301.151 and eliminates the section in its entirety. The Board's processes have changed over time, and the current section is now obsolete. Because an individual may now verify his/her license and print a wall certificate directly from the Board's website, the Board has stopped printing duplicate wall certificates for licensees whose original wall certificate was lost or destroyed. Additionally, the Board no longer issues wallet-sized licenses to any licensee. Further, when an individual changes his/her name and notifies the Board, the Board's online licensure verification system will reflect the name change, but the individual is not able to print a new wall certificate reflecting the name change. The wall certificate will continue to reflect the name of the individual as it was issued on the original wall certificate. As such, the current processes outlined in Board Rule 217.8 are no longer applicable.

How the Section Will Function. The adopted repeal eliminates §217.8 in its entirety.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The repeal is adopted under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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22 TAC §217.9

The Texas Board of Nursing (Board) adopts amendments to 22 TAC §217.9, relating to Inactive and Retired Status, without changes to the proposed text published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1949). The rule will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Occupations Code §301.261(d) and §301.151. Board Rule §217.9 addresses a nurse who has not practiced nursing and whose license has been in inactive status for four or more years. The rule currently sets out the criteria that an individual must meet in order to reactivate his/her license under these circumstances. Among the various requirements, an individual must currently complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course *in addition to* completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act, Rules, and Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The adopted amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refresher course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to reactivation of licensure.

How the Section Will Function. The adopted amendments eliminate §217.9(g)(4) in its entirety and renumber the remaining paragraphs accordingly.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.261(d) and §301.151.

Section 301.261(d) provides that the Board shall remove a person's license from inactive status if the person: (1) requests that the Board remove the person's license from inactive status; (2) pays each appropriate fee; and (3) meets the requirements determined by the Board.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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-202001779

Jena Abel
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Texas Board of Nursing
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Proposal publication date: March 20, 2020
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CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §222.3

Introduction. The Texas Board of Nursing (Board) adopts amendments to §222.3, relating to Renewal of Prescriptive Authority without changes to the proposed text published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1951). The rules will not be republished.

Reasoned Justification. The amendments are being adopted under the authority of the Texas Occupations Code §301.151 and §157.0513, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature.

The adopted amendments are necessary for consistency with adopted changes to §216.3, pertaining to *Continuing Competency*. Section 216.3 was amended on November 19, 2019, in order to implement the requirements of HB 2454, HB 2059, HB 3285, and HB 2174.

Prior to its amendment in November 2019, §216.3 required advanced practice registered nurses holding prescriptive authority to complete at least three contact hours of continuing education related to prescribing controlled substances each biennium, in addition to at least five contact hours of continuing education in pharmacotherapeutics within the same licensing period. The Board originally adopted this requirement in November 2013, following the passage of SB 406, enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. SB 406 expanded the scope of advanced practice registered nurses by authorizing the ordering/prescribing of Schedule II controlled substances in certain settings. The additional targeted continuing education adopted by the Board at that time was reasonably related to the expanded scope of practice authorized by SB 406. Further, the requirement was also adopted during a time when the Board began seeing an increase in the number of its non-therapeutic prescribing cases related to the then up-and-coming opioid crisis.

The new continuing education requirements enacted during the 86th Legislative Session, however, were designed to provide specific education regarding many of the issues affecting the opioid crisis. The Board found many of its prior concerns to be adequately addressed by the new continuing education course requirements. Further, the Board recognized the potential overlap between the new continuing education courses and the existing education requirements for advanced practice registered nurses. As such, the Board eliminated the potentially duplicative requirements to only require advanced practice registered nurses holding prescriptive authority to complete at least five contact hours of continuing education in pharmacotherapeutics each biennium. The Board believed this change could reduce some of the financial burden associated with required continu-

ing education courses without sacrificing the safety of the public or the competency of its practitioners.

The adopted amendments to §222.3 are now necessary to conform the section to the amendments adopted by the Board in November 2019.

How the Sections Will Function. Adopted §222.3(b) requires an advanced practice registered nurse seeking to maintain prescriptive authority to attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium. The other requirements of the subsection have been eliminated.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Texas Occupations Code §301.151 and §157.0513, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 157.0513(a) provides that the board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process to exchange information regarding the names, locations, and license numbers of each physician, APRN, and physician assistant who has entered into a prescriptive authority agreement; by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; by which each board shall maintain and share a list of the board's license holders who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority; and to ensure that each APRN or physician assistant who has entered into a prescriptive authority agreement authorizing the prescribing of opioids is required to complete not less than two hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding reasonable standards of care; the identification of drug-seeking behavior in patients; and effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

Section 481.0764(f) provides that a prescriber or dispenser whose practice includes the prescription or dispensation of opioids shall annually attend at least one hour of continuing education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments. The board shall adopt rules to establish the content of continuing education described by this subsection. The board may collaborate with private and public institutions of higher education and hospitals in establishing the content of the continuing education. This subsection expires August 31, 2023.

Section 481.07635(a) provides that a person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

Section 481.07635(b) states that a person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person's license, certification, or registration.

Section 481.07635(c) states that the regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements 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.

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TRD-202001772
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Texas Administrative Code, Title 25, Part 1, Chapter 412, Subchapter D, concerning Mental Health Services--Admission, Continuity, and Discharge, §§412.151 - 412.154, 412.161 - 412.163, 412.171 - 412.179, 412.191 - 412.195, 412.201 - 412.208, 412.221, and 412.231 - 412.233. The repeal is adopted without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7316), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0201(a)(2)(C), client services functions previously performed by the Department of State Health Services (DSHS) were transferred to the Texas Health and Human Services Commission (HHSC) on September 1, 2016, in accordance with Texas Government Code §531.0201 and §531.02011. The purpose of the adoption is to repeal the rules in Title 25, Part 1, Chapter 412,

Subchapter D, Mental Health Services--Admission, Continuity, and Discharge. New rules in Title 26, Part 1, Chapter 306, Subchapter D, Mental Health Services--Admission, Continuity, and Discharge are adopted elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended December 30, 2019. During this period, HHSC did not receive comments regarding the proposed repeals.

DIVISION 1. GENERAL PROVISIONS

25 TAC §§412.151 - 412.154

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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

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-202001728
Karen Ray
Chief Counsel
Department of State Health Services
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DIVISION 2. SCREENING AND ASSESSMENT FOR CRISIS SERVICES AND ADMISSION INTO LMHA SERVICES--LMHA RESPONSIBILITIES

25 TAC §§412.161 - 412.163

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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. ADMISSION TO SMHFS--SMHF RESPONSIBILITIES

25 TAC §§412.171 - 412.179

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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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DIVISION 4. TRANSFERS AND CHANGING LMHAS

25 TAC §§412.191 - 412.195

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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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For further information, please call: (512) 838-4349

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DIVISION 5. DISCHARGE AND ATP FROM SMHF

25 TAC §§412.201 - 412.208

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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
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DIVISION 6. DISCHARGE FROM LMHA SERVICES

25 TAC §412.221

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 7. TRAINING, REFERENCES, AND DISTRIBUTION

25 TAC §§412.231 - 412.233

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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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Department of State Health Services
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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 306, Subchapter D, concerning Mental Health Services--Admission, Continuity, and Discharge, comprising §§306.151 - 306.154, 306.161 - 306.163, 306.171 - 306.178, 306.191 - 306.195, 306.201 - 306.207, and 306.221 in the Texas Administrative Code (TAC), Title 26, Part 1. Sections 306.153, 306.161 - 306.163, 306.171 - 306.178, 306.191, 306.194, 306.195, 306.201 - 306.207 and 306.221 are adopted with changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7319). These sections will be republished.

Sections 306.151, 306.152, 306.154, 306.192, and 306.193 are adopted without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7319), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

As required by Texas Government Code §531.0201(a)(2)(C), client services functions previously performed by the Department of State Health Services (DSHS) were transferred to the HHSC on September 1, 2016, in accordance with Texas Government Code §531.0201 and §531.02011. The new rules in Title 26, Chapter 306 address the content of rules in Title 25, Chapter 412, Subchapter D, concerning Mental Health Services--Admission, Continuity, and Discharge. The rules in Chapter 412 are repealed elsewhere in this issue of the *Texas Register.*

The rules establish guidelines for admission, transfers, and discharges from state hospitals, local mental health authorities (LMHAs) and local behavioral health authorities (LBHAs), and continuity of services for persons receiving LMHA or LBHA services and inpatient services at a state mental health facility (SMHF) or a facility with a contracted psychiatric bed (CPB). The rules also implement certain provisions in Senate Bill (S.B.) 562, S.B. 1238, and House Bill 601, 86th Legislature, Regular Session, 2019, that relate to voluntary admission requirements and admission criteria for maximum security units.

COMMENTS

The 31-day comment period ended December 30, 2019. During this period, HHSC received comments regarding the proposed rules from one commenter, Disability Rights Texas. A summary of comments relating to the new Chapter 306, Subchapter D, concerning Mental Health Services--Admission, Continuity, and Discharge and HHSC responses follows.

Comment: The commenter expressed general concerns that the rules may not be written in language easily understood and suggested that HHSC did not offer an informal comment period.

Response: HHSC disagrees and declines to revise the rules in response to this comment. The rules were carefully considered and discussed. The informal comment period occurred in June 2016. Based on the feedback received from the informal comment period, HHSC met with external stakeholders in the development of these rules over the past four years.

Comment: The commenter suggested changes to three definitions under §306.153. The commenter suggested adding a reference to the Civil Practice and Remedies Code, Chapter 137, to the definition of advance directive in §306.153(5); suggested adding coordination with a person who provides support to an individual in the definition of continuity of care in §306.153(14); and suggested adding language to include information about the individuals psychiatric, social history, symptomology or support system to the definition of intake assessment in 306.153(36).

Response: HHSC agrees and made the suggested changes in response to the commenter's feedback.

Comment: The commenter recommended clarifying the term "alternate services" in §306.171(d)(2) as it does not refer to services for an emergency medical condition.

Response: HHSC agrees with the commenter and clarified that the facility must coordinate alternate outpatient community services with an LMHA or LBHA. Editorial changes were made by moving §306.171(d)(1) to §306.171(c)(2) and combining §306.171(d)(2) with §306.171(d). The changes were made to increase understanding and to reflect the process a facility must follow if an individual arrives at the facility with an emergency medical condition.

Comment: The commenter recommended adding language to §306.174(b) to delineate the minimum age of an individual that may be admitted into the Waco Center for Youth and recommended considering another setting or program in the discharge planning process under §306.174(d).

Response: HHSC agrees with the commenter and incorporated both recommendations as suggested. Section 306.174(b) was revised to clarify that a child under 10 years of age may not be admitted to the Waco Center for Youth. HHSC additionally made changes to include a child in §306.174(a), (c), and (d) and made grammatical changes accordingly. HHSC also added language to allow another setting or program in the discharge planning process, in addition to a psychiatric hospital.

Comment: The commenter had several suggestions to the rules in §306.175. The commenter recommended establishing a time frame in which services would be made available to an individual who does not meet admission criteria in §306.175(b) and recommended establishing a time frame in which the physical and psychiatric examinations and determination occur in §306.175(c)(2). The commenter also recommended adding information about psychiatric, social history, support system or symptomology in the intake assessment under §306.175(g). Additionally, the commenter recommended adding language requiring documentation of the justification for continued inpatient care in §306.175(j). The commenter also inquired about the rationale for changing the evaluation from three times a week to once a week in §306.175(j).

Response: HHSC agrees with the commenter and established time frames as suggested. The rules were revised to require an LMHA or LBHA to notify the individual or their support system that an individual failed to meet admission criteria within 24 hours. The rules were revised to require a physician to conduct an examination of an individual requesting voluntary admission within 72 hours before or 24 hours after voluntary admission. The revision to §306.175(g) was added as suggested and additional revisions were made to §§306.176(e) and 306.177(c) for consistency. The revision to §306.175(j) regarding documented justification for continued stay for an individual voluntarily receiving acute inpatient treatment was added as suggested. Regarding the commenters inquiry, HHSC determined that the frequency of the evaluation, as written, is appropriate for individuals that are voluntarily admitted.

Comment: The commenter stated that coordinating alternate services as clinically indicated fails to ensure the provision of assessment for services if the person is seeking services in §306.176(d)(2) and recommended adding language in §306.176(d)(3) to notify persons who provide support other than family when an individual is released from a facility.

Response: HHSC agrees with the commenter. The rules were revised to require an LMHA or LBHA to coordinate alternate outpatient community services for an individual within a specified time frame.

Comment: The commenter recommended adding language indicating that the SMHF or facility with a CPB is responsible for contacting the LMHA or LBHA and suggested clarifying the time frame the contact must occur in §306.177(c)(4).

Response: HHSC declines to modify the rule in response to this comment. The recommendation does not apply to this section.

Comment: The commenter suggested a couple of recommendations to §306.191. A suggestion was made to consider the geographical proximity of any persons the individual indicates during a transfer between state mental health facilities in §306.191(b)(4). The commenter questioned if an LMHA could provide input to deny a transfer and suggested clarifying the type of input that is sought from an LMHA in §306.191(b)(5).

Response: HHSC agrees with the commenter and revised §306.191(b)(4) as suggested. HHSC deleted §306.191(b)(5) because this subsection pertains to transfers between state mental health facilities and does not apply to LMHAs or LBHAs.

Comment: The commenter expressed general concerns regarding continuity of services and undefined terms used in §306.195. The commenter recommended: retaining the term "originating" instead of "designated" LMHA in §306.195(a)(1); clarifying the term "open access process" and requiring LMHAs to initiate an appointment for an individual seeking services in §306.195(a)(1)(B)(i); clarifying the term "access information" in §306.195(a)(1)(C) and "open access procedures" in §306.195(a)(1)(D) and suggested requiring an LMHA to secure the appointment for an individual instead of providing information; adding language to ensure continuation of services by providing pertinent information to the receiving LMHA or LBHA prior to the individual's transfer in §306.195(a)(1)(E); and providing a time frame within which the notification of the denial, reduction or termination of services and the right to appeal occurs in §306.195(a)(3). The commenter also stated that §306.195(a)(1)(H) contradicts statements made repeatedly by HHSC that there is no waiting list for services.

Response: HHSC agrees with the commenter as to the term "designated" and retained the term "originating" LMHA or LBHA. HHSC deleted the term "open access processes" and revised language to clarify that the LMHA or LBHA must educate an individual by providing information regarding walk-in intake services, if applicable. HHSC deleted the requirement regarding access information and renumbered the subparagraphs. HHSC revised language to require the originating LMHA or LBHA to submit pertinent information to the receiving LMHA or LBHA after the individual's transfer request to ensure continuity of care. HHSC revised rules to require the new LMHA or LBHA to notify the individual or LAR in writing of the termination, suspension, or reduction of services within ten business days. HHSC declines to modify rules in response to the comment about the waiting list for services. Community-based services are provided based on the availability of the provider's capacity to serve individuals, except for those individuals that have Medicaid. Grammatical changes were made accordingly.

Comment: The commenter made several suggestions to the discharge planning rules in §306.201. The commenter recommended: adding a time frame for a facility to notify persons involved in discharge planning of scheduled staffings and reviews in §306.201(b)(2); revisiting language that requires an LMHA to identify available living arrangements to consider expectations that would diminish the likelihood of readmission in §306.201(c)(3); deleting "recommended" living arrangements and replacing it with "preferred" living arrangements in §306.201(d)(1)(A); requiring facilities to notify other persons, as requested by the individual, of a discharge in §306.201(e)(2); considering the Health Insurance Portability and Accountability Act, which states that records can only be omitted under certain circumstances and may conflict with language in §306.201(h)(2); clarifying that the facility must send a copy of the discharge packet to a county jail, if the county jail has facilitated needed services through another entity in §306.201(h)(3)(B)(iii); requiring a description of the frequency and intensity of the services in the written discharge summary in §306.201(k)(3)(B); and suggested adding language to require a facility to provide information about the resolution of the apparent conflict when caregivers refuse to participate in discharge planning in §306.201(k)(5).

Response: HHSC agrees with the commenter and revised §306.201(b)(2), §306.201(e)(2), §306.201(h)(2), and §306.201(h)(3)(B)(iii) as suggested. HHSC deleted the word "recommended" in §306.201(d)(1)(A), however it was not replaced with "preferred" as suggested since the rule already speaks to individual preferences. HHSC declines to modify the rule in response to §306.201(c)(3) implying the inclusion of a temporary shelter as a living arrangement. The language, as written, places the responsibility on the LMHA or LBHA to identify living arrangements consistent with the individual's clinical needs and preference. HHSC agrees with the commenter suggested edit to §306.201(k)(3)(B) and incorporated the suggestion in the discharge summary by adding the requirement of describing the level of care for services received. HHSC declines to modify the rule in response to requiring information about the resolution of an individual's refusal to participate in discharge planning in §306.201(k)(5). There is no resolution to a refusal to participate in discharge planning, only documentation of the refusal.

Comment: The commenter also made a few recommendations to §306.202, Special Considerations for Discharge Planning. The commenter recommended that the discharge planning review in §306.202(a)(1) focus on how effective the services have been in preventing an unnecessary hospitalization and recommended retaining the term, "effectiveness" instead of "best use of clinical services." The commenter also suggested that the LMHA should determine the type, amount, scope and duration of the services needed to prevent unnecessary admissions in §306.202(a)(3).

Response: HHSC agrees with the commenter and revised the rule as suggested.

Comment: The commenter recommended a change to §306.203(c)(1) to require the SMHF or facility with a CPB to "immediately" assist an individual in creating a written request to leave the SMHF or facility with a CPB rather than assisting the individual "as soon as possible."

Response: HHSC declines to modify the rule in response to this comment because the proposed language reflects the language of the statute at Section 572.004(a) of the Health and Safety Code, which requires the patient be assisted with the written request "as soon as possible."

Comment: The commenter stated that the language in §306.205(b)(3) regarding the deterioration of the individual's condition is vague and recommended retaining the original rule language.

Response: HHSC agrees with the commenter and revised the rule as suggested.

Comment: The commenter recommended establishing a reasonable time frame within which the services are available in §306.207(a)(1)(B)(ii). The commenter also recommended in-

cluding information about the attempts made to locate and contact the individual who fails to appear for a face-to-face contact in §306.207(a)(1)(D).

Response: HHSC agrees with the commenter and incorporated the recommendation by adding "as determined by the individual's level of care," which describes the frequency of services, in §306.207(1)(B)(ii). HHSC revised §306.207(1)(D) as suggested.

HHSC made grammatical changes to the definition of LIDDA in §306.153(39); minor in §306.153(47); ombudsman in §306.153(50); and recovery or treatment plan in §306.153(59).

HHSC made minor editorial changes to certain definitions in §§306.153(6), 306.153(14)(E), 306.153(27), 306.153(37), 306.153(38), 306.153(40), 306.153(62), and 306.153(63) for accuracy, understanding, and consistency.

HHSC replaced the proposed definition of mental illness in §306.153(45) with the definition of mental illness in Chapter 307 that includes "developmental disability" because the proposed definition was too broad. HHSC also replaced the proposed definition of peer specialist in §306.153(54) with the definition in 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services) for accuracy and consistency.

Minor grammatical changes were made to §§306.163(b)(2) and (b)(6), 306.171(a), 306.172(1), 306.174(d), 306.175(a)(1)(C), and 306.202(a)(2)(A) for accuracy, understanding, and consistency. Minor editorial changes were made to §§306.153(24), 306.153(26), 306.153(68), 306.161(c)(1) and (d)(2), §306.162(d), 306.163(b)(7),(c)(1) and (f)(2), 306.173(a)(1), 306.175(e), 306.176(b)(2), 306.178, 306.191, 306.194, 306.201(c)(3), 306.201(d)(1)(E) and (d)(1)(I)(ii), 306.201(e)(1), and 306.207(1)(B)(iii).

Minor editorial changes were made to incorporate people first language in §§306.153(33), 306.153(34), 306.178, 306.191(c), 306.194(a), 306.203(a) and (b), 306.203(e)(1)(A), 306.205(a), and 306.206(a). Sections 306.203 and 306.204 were renamed to reflect people first language.

Minor editorial changes were made to update cross references to 25 TAC Chapter 412, Subchapter G that was administratively transferred to 26 TAC Chapter 301, Subchapter G in the following sections: §§306.153(57); 306.153(59)(A); 306.153(69); 306.161(a), (d), and (d)(3); 306.195(a)(1)(G) and (a)(2)(A)(iii); 306.202(g)(1)(B)(i) and (g)(2)(B)(i); 306.207(1)(C); and 306.221(b)(1). Cross references were also updated in §§306.153(35), 306.201(c)(7), and 306.202(b)(2) and (b)(3).

DIVISION 1. GENERAL PROVISIONS

26 TAC §§306.151 - 306.154

STATUTORY AUTHORITY

The new sections 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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §534.053 and §534.058.

§306.153. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) Absence--When an individual, previously admitted to an SMHF and not discharged from the SMHF, is physically away from the SMHF for any reason, including hospitalization, home visit, special activity, unauthorized departure, or absence for trial placement.

(2) Admission--

(A) An individual's acceptance to an SMHF's custody or a facility with a CPB for inpatient services, based on:

(i) a physician's order issued in accordance with §306.175(h)(2)(C) of this subchapter (relating to Voluntary Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility);

(ii) a physician's order issued in accordance with §306.176(c)(3) of this subchapter (relating to Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility for Emergency Detention);

(iii) a court's order of protective custody issued in accordance with Texas Health and Safety Code §574.022;

(iv) a court's order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034, or Texas Family Code Chapter 55;

(v) a court's order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035, or Texas Family Code Chapter 55; or

(vi) a court's order for commitment issued in accordance with the Texas Code of Criminal Procedure, Chapter 46B or Chapter 46C.

(B) The acceptance of an individual in the mental health priority population into LMHA or LBHA services.

(3) Adolescent--An individual at least 13 years of age, but younger than 18 years of age.

(4) Adult--An individual at least 18 years of age or older.

(5) Advance directive--As used in this subchapter, includes:

(A) an instruction made under Texas Health and Safety Code §§166.032, 166.034 or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition;

(B) an out-of-hospital DNR order, as defined by Texas Health and Safety Code §166.081;

(C) a medical power of attorney under Texas Health and Safety Code, Chapter 166, Subchapter D; or

(D) a declaration for mental health treatment for preferences or instructions regarding mental health treatment in accordance with Civil Practice and Remedies Code Chapter 137.

(6) Alternate provider--An entity that provides mental health services or substance use disorder treatment services in the community but not pursuant to a contract or memorandum of understanding with an LMHA or LBHA.

(7) APRN--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse as provided by Texas Occupations Code §301.152.

(8) Assessment--The administrative process an SMHF or a facility with a CPB uses to gather information from a prospective patient, including a medical history and the problem for which the prospective patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified, as defined by Texas Health and Safety Code §572.0025(h)(2).

(9) Assessment professional--In accordance with Texas Health and Safety Code §572.0025(c)-(d), a staff member of an SMHF or facility with a CPB whose responsibilities include conducting the intake assessment described in §306.175(g) and §306.176(e) of this subchapter, and who is:

(A) a physician licensed to practice medicine under Texas Occupations Code, Chapter 155;

(B) a physician assistant licensed under Texas Occupations Code, Chapter 204;

(C) an APRN licensed under Texas Occupations Code, Chapter 301;

(D) a registered nurse licensed under Texas Occupations Code, Chapter 301;

(E) a psychologist licensed under Texas Occupations Code, Chapter 501;

(F) a psychological associate licensed under Texas Occupations Code, Chapter 501;

(G) a licensed professional counselor licensed under Texas Occupations Code, Chapter 503;

(H) a licensed social worker licensed under Texas Occupations Code, Chapter 505; or

(I) a licensed marriage and family therapist licensed under Texas Occupations Code, Chapter 502.

(10) ATP--Absence for trial placement. When an individual, currently admitted to an SMHF, is physically away from the SMHF for the SMHF to evaluate the individual's adjustment to a particular living arrangement before the individual's discharge and as a potential residence following discharge. An ATP is a type of furlough, as referenced in Texas Health and Safety Code, Chapter 574, Subchapter F.

(11) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(12) Capacity--An individual's ability to understand and appreciate the nature and consequences of a decision regarding the individual's medical treatment, and the ability of the individual to reach an informed decision in the matter.

(13) Child--An individual at least three years of age, but younger than 13 years of age.

(14) Continuity of care--Activities designed to ensure an individual is provided uninterrupted services during a transition between inpatient and outpatient services and that assist the individual and the individual's LAR in identifying, accessing, and coordinating LMHA or LBHA services and other appropriate services and supports in the community needed by the individual, including:

(A) assisting with admissions and discharges;

(B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources, and coordinating the provision of services;

(C) participating in developing and reviewing the individual's recovery or treatment plan;

(D) promoting implementation of the individual's recovery or treatment plan; and

(E) coordinating notification of continuity of care services between the individual and the individual's family and any other person providing support as authorized by the individual, and LAR, if any.

(15) Continuity of care worker--An LMHA, LBHA, or LIDDA staff member responsible for providing continuity of care services. The staff member may collaborate with a peer specialist, recovery specialist, or family partner to provide continuity of services.

(16) COPSD--Co-occurring psychiatric and substance use disorder.

(17) COPSD model--An application of evidence-based practices for an individual diagnosed with co-occurring conditions of mental illness and substance use disorder.

(18) CPB--Contracted psychiatric bed. A state-funded contracted psychiatric bed that:

(A) is authorized by an LMHA or LBHA; and

(B) is used for inpatient care in the community, and this does not include a crisis respite unit, crisis residential unit, an extended observation unit, or a crisis stabilization unit.

(19) CRCG--Community Resource Coordination Group. A local interagency group comprised of public and private providers who collaborate to develop individualized service plans for individuals whose needs may be met through interagency coordination and cooperation. CRCGs are established and operate in accordance with a Memorandum of Understanding on Services for Persons Needing Multiagency Services, required by Texas Government Code §531.055.

(20) Crisis--A situation in which:

(A) an individual presents an immediate danger to self or others;

(B) an individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes he presents an immediate danger to self or others, or the individual's mental or physical health is at risk of serious deterioration.

(21) Crisis treatment alternatives--Community-based facilities or units providing short-term, residential crisis treatment to ameliorate a behavioral health crisis in the least restrictive environment, including crisis stabilization units, extended observation units, crisis residential units, and crisis respite units. The intensity and scope of services varies by facility type and is available in a local service area based upon the local needs and characteristics of the community.

(22) Day--Calendar day.

(23) DD--Developmental disability. As listed in the Texas Health and Safety Code §531.002, an individual with a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments that:

(A) manifests before the person reaches 22 years of age;

(B) is likely to continue indefinitely;

(C) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individual-

ized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) results in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(24) Designated LMHA or LBHA--The LMHA or LBHA:

(A) that serves the individual's county of residence, which is determined in accordance with §306.162 of this subchapter (relating to Determining County of Residence); or

(B) that does not serve the individual's county of residence but has taken responsibility for ensuring the individual's LMHA or LBHA services.

(25) Discharge--

(A) From an SMHF or a facility with a CPB: The release of an individual from the custody and care of a provider of inpatient services.

(B) From LMHA or LBHA services: The termination of LMHA or LBHA services delivered to an individual by an LMHA or LBHA.

(26) Discharged unexpectedly--A discharge from an SMHF or facility with a CPB:

(A) due to an individual's unauthorized departure;

(B) at the individual's request;

(C) due to a court releasing the individual;

(D) due to the death of the individual; or

(E) due to the execution of an arrest warrant for the individual.

(27) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, or symptoms of substance use disorder) such that the absence of immediate medical attention could reasonably result in:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) or others in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman having contractions:

(i) inadequate time to affect a safe transfer to another hospital before delivery; or

(ii) a transfer posing a threat to the health and safety of the woman or the unborn child.

(28) Face-to-face--A form of contact occurring in person or through the use of audiovisual or other telecommunications technology.

(29) Facility--A care facility including a state mental health facility, private psychiatric hospital, medical hospital, and community setting, but does not include a nursing facility or an assisted living facility.

(30) HHSC--Texas Health and Human Services Commission or its designee.

(31) ID--Intellectual disability. Consistent with Texas Health and Safety Code §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before age 18.

(32) Individual--A person seeking or receiving services under this subchapter.

(33) Individual involuntarily receiving treatment--An individual receiving inpatient services based on an admission to a state mental health facility or a facility with a CPB made in accordance with:

(A) §306.176 of this subchapter;

(B) §306.177 of this subchapter (relating to Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services);

(C) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034 or Texas Family Code, Chapter 55;

(D) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035 or Texas Family Code, Chapter 55;

(E) an order for commitment issued in accordance with Texas Code of Criminal Procedure, Chapter 46B; or

(F) an order for commitment issued in accordance with Texas Code of Criminal Procedure, Chapter 46C.

(34) Individual voluntarily receiving treatment--An individual receiving inpatient services based on an admission made in accordance with:

(A) §306.175 of this subchapter; or

(B) §306.178 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission).

(35) Inpatient services--Residential psychiatric treatment provided to an individual in an SMHF, a facility with a CPB, a hospital licensed under the Texas Health and Safety Code, Chapter 241 or Chapter 577, or a CSU licensed under Chapter 510 of this title (relating to Private Psychiatric Hospitals and Crisis Stabilization Units).

(36) Intake assessment--The administrative process conducted by an assessment professional for gathering information about a prospective patient including the psychiatric and medical history, social history, symptomology and support system and giving a prospective patient information about the facility and the facility's treatment and services.

(37) LAR--Legally authorized representative. A person authorized by state law to act on behalf of an individual for the purposes of:

(A) admission, transfer or discharge that includes:

(i) a parent, non-Department of Family and Protective Services managing conservator or guardian of a minor;

(ii) a Department of Family and Protective Service managing conservator of a minor acting pursuant to Texas Health and Safety Code §572.001 (c-2) - (c-4); and

(iii) a person eligible to consent to treatment for a minor under §32.001(a), Texas Family Code, or a person who may request from a district court authorization under Texas Family Code, Chapter 35 for the temporary admission of a minor.

(B) consent on behalf of an individual with regard to a matter described in this subchapter other than admission, transfer or discharge includes:

(i) persons described by subparagraph (A) of this paragraph; and

(ii) an agent acting under a Medical Power of Attorney under Texas Health and Safety Code, Chapter 166 or a Declaration for Mental Health Treatment under Texas Civil Practice and Remedies Code, Chapter 137.

(38) LBHA--Local behavioral health authority. An entity designated as an LBHA by HHSC in accordance with Texas Health and Safety Code §533.0356.

(39) LIDDA--Local intellectual and developmental disability authority. An entity designated by HHSC in accordance with Texas Health and Safety Code §533A.035.

(40) LMHA--Local mental health authority. An entity designated as an LMHA by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(41) LMHA or LBHA network provider--An entity that provides mental health services in the community pursuant to a contract or memorandum of understanding with an LMHA or LBHA, including that part of an LMHA or LBHA directly providing mental health services.

(42) LMHA or LBHA services--Inpatient and outpatient mental health services provided by an LMHA or LBHA network provider to an individual in the individual's home community.

(43) Local service area--A geographic area composed of one or more Texas counties defining the population that may receive services from an LMHA or LBHA.

(44) MCO--Managed care organization. An entity governed by Chapter 843 of the Texas Insurance Code to operate as a health maintenance organization or to issue a private provider benefit plan.

(45) Mental illness--An illness, disease, or condition, other than a sole diagnosis of epilepsy, dementia, substance use disorder, ID, or DD that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(46) MH priority population--Mental health priority population. As identified in state performance contracts with LMHAs or LBHAs, those groups of children, adolescents, and adults with mental illness or serious emotional disturbance assessed as most in need of mental health services.

(47) Minor--An individual younger than 18 years of age.

(48) Nursing facility--A long-term care facility licensed by HHSC as a nursing home, nursing facility, or skilled nursing facility as defined in Texas Health and Safety Code, Chapter 242.

(49) Offender with special needs--An individual who has a terminal or serious medical condition, a mental illness, an ID, a DD, or a physical disability, and is served by the Texas Correctional Office on Offenders with Medical or Mental Impairments as provided in Texas Health and Safety Code, Chapter 614.

(50) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by Texas Government Code §531.02251, which serves as a neutral party to help individuals, including individuals who are uninsured or have public or private health benefit coverage. The behavioral health care providers navigate and resolve issues related to the individual's access to behavioral health care, including care for mental health conditions and substance use disorders.

(51) PASRR--Preadmission screening and resident review in accordance with 40 TAC Chapter 19, Subchapter BB (relating to Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review (PASRR)).

(52) PASRR Level I screening--The process of screening an individual to identify whether the individual is suspected of having a mental illness, ID, or DD.

(53) PASRR Level II evaluation--A face-to-face evaluation of an individual suspected of having a mental illness, ID, or DD performed by a LIDDA, LMHA, or LBHA to determine if the individual has a mental illness, ID, or DD, and if so, to:

(A) assess the individual's need for care in a nursing facility;

(B) assess the individual's need for nursing facility specialized services, LIDDA specialized services, and LMHA or LBHA specialized services; and

(C) identify alternate placement options.

(54) Peer specialist--A person who uses lived experience in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency in accordance with 1 TAC Chapter 354, Subchapter N.

(55) Permanent residence--The physical location where an individual lives, or if a minor, where the minor's parents or legal guardian lives. A post office box is not a permanent residence.

(56) Preliminary examination--An assessment for medical stability and a psychiatric examination in accordance with Texas Health and Safety Code §573.022(a)(2).

(57) QMHP-CS--Qualified mental health professional-community services. A staff member who meets the requirements and performs the functions described in Chapter301, Subchapter G of this title (relating to Mental Health Community Services Standards).

(58) Recovery--A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(59) Recovery or treatment plan--A written plan:

(A) developed in collaboration with an individual or the individual's LAR if required, and a QMHP-CS or Licensed Practitioner of the Healing Arts (LPHA) as defined in §301.303 of this title (relating to Definitions);

(B) amended at any time based on an individual's needs or requests;

(C) that guides the recovery treatment process and fosters resiliency;

(D) completed in conjunction with the uniform assessment;

(E) that identifies the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) that includes recommended services and supports or reasons for the exclusion of services and supports.

(60) Screening--Activities performed by a QMHP-CS to:

(A) collect triage information through face-to-face or telephone interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine, conducted before the face-to-face assessment to determine the need for emergency services; and

(C) determine the need for in-depth assessment.

(61) SMHF--State mental health facility. A state hospital or a state center with an inpatient psychiatric component.

(62) SSLC--State supported living center. Consistent with Texas Health and Safety Code §531.002, a residential facility operated by the State to provide individuals with an ID a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

(63) Substance use disorder--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets the criteria for substance use as described in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association.

(64) TAC--Texas Administrative Code.

(65) TCOOMMI--Texas Correctional Office on Offenders with Medical or Mental Impairments or its designee.

(66) Transfer--To move from one facility to another facility.

(67) Treating physician--A physician who coordinates and oversees an individual's treatment.

(68) Treatment team--A group of treatment providers, an individual, the individual's LAR, if any, and the LMHA, LBHA, or LIDDA who work together in a coordinated manner to provide comprehensive mental health services to the individual.

(69) Uniform assessment--An assessment tool adopted by HHSC under §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) used for recommending an individual's level of care.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. SCREENING AND ASSESSMENT FOR CRISIS SERVICES AND ADMISSION INTO LOCAL MENTAL HEALTH AUTHORITY OR LOCAL BEHAVIORAL HEALTH AUTHORITY SERVICES--LOCAL MENTAL HEALTH AUTHORITY OR LOCAL BEHAVIORAL HEALTH AUTHORITY RESPONSIBILITIES

26 TAC §§306.161 - 306.163

STATUTORY AUTHORITY

The new sections 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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §534.053 and §534.058.

§306.161. Screening and Assessment.

(a) If an individual is in crisis, an LMHA or LBHA ensures immediate screening and, if recommended based on the screening, a face-to-face intake assessment of an individual in the LMHA's or LBHA's local service area in accordance with §301.327 of this title (relating to Access to Mental Health Community Services).

(b) When the crisis is resolved, the LMHA or LBHA must assess the individual using the uniform assessment and determine:

(1) referral for ongoing services at the LMHA or LBHA;

(2) referral to an alternate provider;

(3) referral to community-based crisis treatment alternative as described in §306.163 of this division (relating to Most Appropriate and Available Treatment Options);

(4) the individual's transportation by identifying and ensuring the individual's transportation needs were met; or

(5) no referral is needed.

(c) If an individual is not in crisis, an LMHA or LBHA screens each individual presenting for services at the LMHA or LBHA as follows:

(1) an LMHA or LBHA staff who is a QMHP-CS or LPHA conducts a screening; and

(2) an LMHA or LBHA staff determines whether the individual's county of residence is within the LMHA's or LBHA's local service area.

(d) If the individual's county of residence is within the LMHA's or LBHA's local service area and the screenings described in subsections (a) and (c) of this section indicates an intake assessment is needed, the LMHA or LBHA conducts an assessment in accordance with §301.353(a) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization).

(1) LMHAs and LBHAs serve individuals in the MH priority population designated by HHSC. For an individual in the MH

priority population, the LMHA or LBHA identifies which services the individual may be eligible to receive and, if appropriate, determines whether the individual receives services immediately or places the individual on a waiting list for services and refers the individual to other community resources.

(2) Individuals who are enrolled in Medicaid must receive services immediately and may not be placed on a waiting list.

(3) An LMHA or LBHA must serve an individual in accordance with §301.327 of this title.

(4) For an individual not in the MH priority population, the LMHA or LBHA must provide the individual with written notification regarding:

(A) the denial of services and the opportunity to appeal in accordance with §306.154 of this subchapter (relating to Notification and Appeals Process for Local Mental Health Authority or Local Behavioral Health Authority Services); and

(B) the availability of information and assistance from the Ombudsman by contacting the Ombudsman at 1-800-252-8154 or online at hhs.texas.gov/ombudsman.

§306.162. Determining County of Residence.

(a) County of Residence for Adults.

(1) An adult's county of residence is the county which the adult or the adult's LAR indicates is the county of the adult's permanent residence, unless there is a preponderance of evidence to the contrary. If the adult is not a Texas resident or indicates no permanent address, the adult's county of residence is the county in which the evidence indicates the adult resides.

(2) If an adult is unable to communicate the location of the adult's permanent residence and there is no evidence indicating the location of the adult's permanent residence or if an adult is not a Texas resident, the adult's county of residence is the county in which the adult is physically present when the adult requests or requires services.

(3) If an LMHA or LBHA is paying for an adult's community mental health services delivered in the local service area of another LMHA or LBHA, or if an LMHA or LBHA is paying for an adult's living arrangement that is located outside the LMHA's or LBHA's local service area, the county in which the paying LMHA or LBHA is located is the adult's county of residence.

(b) County of Residence for Minors.

(1) Except as provided in paragraph (2) of this subsection, a minor's county of residence is the county in which the minor's LAR's permanent residence is located.

(2) A minor's county of residence is the county in which the minor currently resides if:

(A) it cannot be determined in which county the minor's LAR's permanent residence is located;

(B) a state agency is the minor's LAR;

(C) the minor does not have an LAR; or

(D) the minor is at least 16 years of age and self-enrolling into services.

(c) Dispute regarding county of residence initiated by an LMHA or LBHA.

(1) The LMHA or LBHA must initiate or continue providing clinically necessary services, including discharge planning, during the dispute resolution process.

(2) If an LMHA or LBHA initiates a dispute that executive directors of the affected LMHAs or LBHAs cannot resolve, the HHSC performance contract manager(s) of the affected LMHAs or LBHAs resolves the dispute.

(d) Disputes regarding county of residence initiated by or on behalf of an individual. The Ombudsman may consult with the HHSC performance contract manager(s) of the affected LMHAs or LBHAs and help resolve a dispute initiated by or on behalf of an individual.

(e) Changing county of residence status. Changing an individual's county of residence requires agreement between the LMHAs or LBHAs affected by the change, except as provided in §306.195 of this subchapter (relating to Changing Local Mental Health Authorities or Local Behavioral Health Authorities).

§306.163. Most Appropriate and Available Treatment Options.

(a) Recommendation for treatment. The designated LMHA or LBHA is responsible for recommending the most appropriate and available treatment alternative for an individual in need of mental health services.

(b) Inpatient services.

(1) Before an LMHA or LBHA refers an individual for inpatient services, the LMHA or LBHA must screen and assess the individual to determine if the individual requires inpatient services.

(2) If the screening and assessment indicates the individual requires inpatient services and inpatient services are the least restrictive setting available, the LMHA or LBHA refers the individual:

(A) to an SMHF or facility with a CPB, if the LMHA or LBHA determines that the individual meets the criteria for admission; or

(B) to an LMHA or LBHA network provider of inpatient services.

(3) If the individual is identified in the applicable HHSC automation system as having an ID, the LMHA or LBHA informs the designated LIDDA that the individual has been referred for inpatient services.

(4) If the LMHA, LBHA, or LMHA or LBHA-network provider refers the individual for inpatient services, the LMHA or LBHA must communicate necessary information to the contracted inpatient provider before or at the time of admission, including the individual's:

(A) identifying information, including address;

(B) legal status (e.g., regarding guardianship, charges pending, custody as applicable;

(C) pertinent medical and medication information, including known disabilities;

(D) behavioral information, including information regarding COPSD;

(E) other pertinent treatment information;

(F) finances, third-party coverage, and other benefits, if known; and

(G) advance directive.

(5) If an LMHA or LBHA, other than the individual's designated LMHA or LBHA, refers the individual for inpatient services, the SMHF or facility with a CPB notifies the individual's designated LMHA or LBHA of the referral for inpatient services by the end of the next business day.

(6) The designated LMHA or LBHA assigns a continuity of care worker to an individual admitted to an SMHF, a facility with a CPB, or an LMHA or LBHA inpatient services network provider.

(7) If the individual has an ID or DD, the designated LIDDA assigns a continuity of care worker to the individual.

(8) The LMHA or LBHA continuity of care worker, and LIDDA continuity of care worker as applicable, are responsible for the facilitation of the individual's continuity of services.

(c) Community-based crisis treatment options.

(1) An LMHA or LBHA must ensure the provision of crisis services to an individual experiencing a crisis while the individual is in its local service area.

(2) Individuals in need of a higher level of care, but not requiring inpatient services, have the option, as available, for admission to other services such as crisis respite, crisis residential, extended observation, or crisis stabilization unit.

(d) LMHA or LBHA Services.

(1) If an LMHA or LBHA admits an individual to LMHA or LBHA services, the LMHA or LBHA ensures the provision of services in the most integrated setting available.

(2) The LMHA or LBHA assigns, to an individual receiving services, a staff member who is responsible for coordinating the individual's services.

(e) Court Ordered Treatment. The LMHA or LBHA must provide services to an individual ordered by a court to participate in outpatient mental health services or competency restoration services, if available, when the court identifies the LMHA or LBHA as being responsible for those services.

(f) Referral to alternate provider.

(1) If an individual requests a referral to an alternate provider, and it is not court ordered to receive services from the LMHA or LBHA, the LMHA or LBHA makes a referral to an alternate provider in accordance with the request.

(2) If an individual has third-party coverage, but the coverage will not pay for needed services because the designated LMHA or LBHA does not have a provider in its network that is approved by the third-party coverage, the designated LMHA or LBHA acts in accordance with 25 TAC §412.106(c)(2) (relating to Determination of Ability to Pay).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 838-4349

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DIVISION 3. ADMISSION TO A STATE MENTAL HEALTH FACILITY OR A FACILITY WITH A CONTRACTED PSYCHIATRIC BED--PROVIDER RESPONSIBILITIES

26 TAC §§306.171 - 306.178

STATUTORY AUTHORITY

The new sections 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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §534.053 and §534.058.

§306.171. General Admission Criteria for a State Mental Health Facility or Facility with a Contracted Psychiatric Bed.

(a) With the exceptions of Waco Center for Youth, a maximum-security unit, and an adolescent forensic unit, an SMHF or facility with a CPB may admit an individual, who has been assessed by an LMHA or LBHA and recommended for inpatient admission, only if the individual has a mental illness and, as a result of the mental illness:

(1) presents a substantial risk of serious harm to self or others; or

(2) evidences a substantial risk of mental or physical deterioration.

(b) An individual's admission to an SMHF or facility with a CPB may not occur if the individual:

(1) requires specialized care that is not available at the SMHF or facility with a CPB; or

(2) has a physical medical condition that is unstable and could reasonably require inpatient medical treatment for the condition.

(c) If an individual arrives at an SMHF or facility with a CPB for mental health services, and the individual was not screened or referred by an LMHA or LBHA as described in §306.163 of this subchapter (relating to Most Appropriate and Available Treatment Options):

(1) the SMHF or facility with a CPB notifies the designated LMHA or LBHA that the individual has presented for services at the SMHF or facility with a CPB; and

(2) the SMHF or facility with a CPB physician determines if the individual has an emergency medical condition and the physician decides whether the facility has the capability to treat the emergency medical condition.

(A) If the SMHF or facility with a CPB has the capability to treat the emergency medical condition, the facility admits the individual as required by the Emergency Medical Treatment and Active Labor Act (EMTALA) (42 USC §1395dd).

(B) If the SMHF or facility with a CPB does not have the capability to treat the emergency medical condition in accordance with EMTALA, the facility provides evaluation and treatment within its capability to stabilize the individual and arranges for the individual to be transferred to a hospital that has the capability to treat the emergency medical condition.

(d) If an LMHA or LBHA authorized an individual's admission to an SMHF or a facility with a CPB and the facility determines

that the individual does not meet inpatient criteria for admission, the facility contacts the designated LMHA or LBHA to coordinate alternate outpatient community services. The designated LMHA or LBHA must contact the individual within 24 hours after being notified that the individual does not meet inpatient admission criteria.

§306.172. Admission Criteria for Maximum-Security Units.

An individual's admission to a maximum-security unit occurs only if the individual is:

(1) committed pursuant to Chapter 46B or Chapter 46C of the Texas Code of Criminal Procedure and determined to require admission to a maximum-security unit; or

(2) determined manifestly dangerous in accordance with HHSC state hospital policies.

§306.173. Admission Criteria for an Adolescent Forensic Unit.

(a) An adolescent forensic unit admits an adolescent only if the adolescent meets the criteria described in a paragraph of this subsection.

(1) Condition of probation or parole. The adolescent's admission to an adolescent forensic unit fulfills a condition of probation or parole for a juvenile offense if the adolescent:

(A) based on a clinical evaluation, is determined to be in need of specialized mental health treatment in a secure treatment setting to address violent behavior or delinquent conduct;

(B) has co-occurring psychiatric and substance use disorders; or

(C) has exhausted available community resources for treatment and has been recommended for admission by the local CRCG.

(2) Commitment under Texas Family Code, Chapter 55. The adolescent has been committed to a mental health facility under the Texas Family Code, Chapter 55, Subchapter C or D.

(3) Determined manifestly dangerous. The adolescent has been determined manifestly dangerous in accordance with HHSC state hospital policies.

(b) An adolescent may not be admitted to an adolescent forensic unit if a physician determines the adolescent has an ID.

§306.174. Admission Criteria for Waco Center for Youth.

(a) An individual's admission to Waco Center for Youth occurs only if the individual:

(1) is an adolescent, or an adolescent whose age at admission allows adequate time for treatment programming before reaching 18 years of age;

(2) is diagnosed as emotionally disturbed;

(3) has a history of behavior adjustment problems;

(4) needs a structured treatment program in a residential facility; and

(5) is currently receiving LMHA or LBHA services or inpatient services at an SMHF or a facility with a CPB and has been referred for admission by:

(A) the LMHA or LBHA after presentation and endorsement by the local CRCG that all appropriate community-based resources have been exhausted and Waco Center for Youth is the least restrictive environment needed, the LMHA presents the CRCG letter of recommendation with the referral;

(B) the LMHA or LBHA, following a documented LMHA or LBHA assessment that local resources have been explored and exhausted (if the full CRCG cannot convene in a timely manner); or

(C) an SMHF.

(b) Waco Center for Youth may not admit:

(1) a child under 10 years of age;

(2) an adolescent that has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under the Texas Family Code, Title 3;

(3) an adolescent that is acutely psychotic, suicidal, homicidal, or seriously violent; or

(4) an adolescent that is determined by a physician to have an ID.

(c) If the Waco Center for Youth denies admission for services, Waco Center for Youth provides the adolescent's LAR written notification stating:

(1) the reason for the denial of services; and

(2) that the LAR may appeal the denial by contacting the LMHA or LBHA.

(d) If an adolescent receiving services at Waco Center for Youth requires admission to a psychiatric hospital or another setting or program, the discharge planning process includes the joint determination of the psychiatric hospital and Waco Center for Youth of the clinical appropriateness of readmission to Waco Center for Youth. With the agreement of the adolescent's treatment team, the Waco Center for Youth leadership, psychiatric hospital leadership, and the adolescent's LAR, the adolescent is prioritized for readmission to Waco Center for Youth.

§306.175. Voluntary Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility.

(a) Request for voluntary admission.

(1) In accordance with Texas Health and Safety Code §572.001, a request for voluntary admission of an individual with a mental illness may only be made by:

(A) the individual, if the individual is at least 16 years of age or older;

(B) the LAR if:

(i) the individual is younger than 18 years of age; and

(ii) the LAR is described by §306.153(36)(A)(i) or (iii) of this subchapter (relating to Definitions); or

(C) the LAR, if the LAR is described by §306.153(36)(A)(ii), and admission is sought pursuant to the provisions of Texas Health and Safety Code §572.001(c-1) - (c-4).

(2) In accordance with Texas Health and Safety Code §572.001(b) and (e), a request for admission must:

(A) be in writing and signed by the LAR or individual making the request; and

(B) include a statement that the LAR or individual making the request:

(i) agrees that the individual remains in the SMHF or facility with a CPB until the individual's discharge; and

(ii) consents to diagnosis, observation, care, and treatment of the individual until:

(I) the discharge of the individual; or

(II) the individual is entitled to leave the SMHF or facility with a CPB, in accordance with Texas Health and Safety Code §572.004, after a request for discharge is made.

(3) The consent given under paragraph (2)(B)(ii) of this subsection does not waive an individual's rights described in:

(A) 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(B) 25 TAC Chapter 405, Subchapter E (relating to Electroconvulsive Therapy (ECT));

(C) 25 TAC Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(D) 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services).

(b) Failure to meet admission criteria. If the physician of an SMHF or facility with a CPB determines that an individual does not meet admission criteria and that community resources may appropriately serve the individual, the facility contacts the LMHA or LBHA to discuss the availability and appropriateness of community-based services for the individual to receive. The LMHA or LBHA must contact the individual, the individual's family or any other person providing support as authorized by the individual, and LAR, if any, no later than 24 hours after the LMHA or LBHA is notified of the failure to meet the admission criteria.

(c) Examination.

(1) A physician must conduct an examination on each individual requesting voluntary admission in accordance with this subsection.

(2) In accordance with Texas Health and Safety Code §572.0025(f)(1)(A), a physician conducts a physical and psychiatric examination, either in person or through the use of audiovisual or other telecommunications technology within 72 hours before voluntary admission or 24 hours after voluntary admission for the following:

(A) an assessment for medical stability; and

(B) a psychiatric examination, and, if indicated, a substance use assessment.

(3) In accordance with Texas Health and Safety Code §572.0025(f)(1); the physician may not delegate the examination to a non-physician.

(d) Meets admission criteria. If, after examination, the physician determines that the individual meets admission criteria of the SMHF or facility with a CPB, the SMHF or facility with a CPB admits the individual.

(e) Does not meet admission criteria. If, after the examination, the physician determines that the individual does not meet the admission criteria of the SMHF or facility with a CPB, the SMHF or the facility with a CPB contacts the designated LMHA or LBHA to coordinate alternate outpatient community services as clinically indicated.

(f) Capacity to consent.

(1) If a physician determines that an individual whose consent is necessary for a voluntary admission does not have the capacity to consent to diagnosis, observation, care, and treatment, the SMHF or the facility with a CPB may not voluntarily admit the individual.

(2) When appropriate, the SMHF or the facility with a CPB initiates an emergency detention proceeding in accordance with Texas Health and Safety Code, Chapter 573, or files an application for court-ordered inpatient mental health services in accordance with Texas Health and Safety Code Chapter 574.

(g) Intake assessment. In accordance with Texas Health and Safety Code §572.0025(b), an assessment professional for an SMHF or facility with a CPB, before voluntary admission of an individual, conducts an intake assessment for:

(1) obtaining relevant information about the individual, including:

(A) psychiatric and medical history;

(B) social history;

(C) symptomology;

(D) support systems;

(E) finances;

(F) third-party coverage or insurance benefits; and

(G) advance directives;

(2) explaining, orally and in writing, the individual's rights described in 25 TAC Chapter 404, Subchapter E;

(3) explaining, orally and in writing, the SMHF's or facility with a CPB's services and treatment as they relate to the individual;

(4) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008; and

(5) explaining, orally and in writing, the individual trust fund account, charges for services, and the financial responsibility form.

(h) Requirements for voluntary admission. An SMHF or facility with a CPB may voluntarily admit an individual only if:

(1) a request for admission is made in accordance with subsection (a) of this section;

(2) a physician has:

(A) in accordance with Texas Health and Safety Code §572.0025(f)(1):

(i) conducted an examination in accordance with subsection (c) of this section within 72 hours before the admission or 24 hours after the admission; or

(ii) has consulted with a physician who has conducted an examination in accordance with subsection (c) of this section within 72 hours before the admission or 24 hours after the admission;

(B) determined that the individual meets the admission criteria of the SMHF or facility with a CPB and that admission is clinically justified; and

(C) issued an order admitting the individual; and

(3) in accordance with Texas Health and Safety Code §572.0025(f)(2), the administrator or designee of the SMHF or facility with a CPB has signed a written statement agreeing to admit the individual.

(i) Documentation of admission order. In accordance with Texas Health and Safety Code §572.0025(f)(1), the order described in subsection (h)(2)(C) of this section is issued:

(1) in writing and signed by the issuing physician; or

(2) orally or electronically if, within 24 hours after its issuance, the SMHF or facility with a CPB has a written order signed by the issuing physician.

(j) Periodic evaluation. To determine the need for continued inpatient treatment, a physician or physician's designee must evaluate and document justification for continued stay for an individual voluntarily receiving acute inpatient treatment as often as clinically indicated, but no less than once a week.

§306.176. Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility for Emergency Detention.

(a) Acceptance for preliminary examination. In accordance with Texas Health and Safety Code §573.021 and §573.022, an SMHF or facility with a CPB accepts for a preliminary examination:

(1) an individual, of any age, who has been apprehended and transported to the SMHF or facility with a CPB by a peace officer or emergency medical services personnel in accordance with Texas Health and Safety Code §573.001 or §573.012; or

(2) an adult who has been transported to the SMHF or facility with a CPB by the adult's guardian in accordance with Texas Health and Safety Code §573.003.

(b) Preliminary examination.

(1) A physician conducts a preliminary examination of an individual as soon as possible but not more than 12 hours after the individual is transported to the SMHF or facility with a CPB for emergency detention.

(2) The preliminary examination consists of:

(A) an assessment for medical stability; and

(B) a psychiatric examination, including a substance use assessment if indicated, to determine if the individual meets the criteria described in subsection (c)(1) of this section.

(c) Requirements for emergency detention. The SMHF or facility with a CPB admits an individual for emergency detention if:

(1) in accordance with Texas Health and Safety Code §573.022(a)(2), a physician determines from the preliminary examination that:

(A) the individual has a mental illness;

(B) the individual evidences a substantial risk of serious harm to himself or others;

(C) the described risk of harm is imminent unless the individual is immediately detained; and

(D) emergency detention is the least restrictive means by which the necessary detention may be accomplished;

(2) in accordance with Texas Health and Safety Code §573.022(a)(3), a physician makes a written statement documenting the determination described in paragraph (1) of this subsection and describing:

(A) the nature of the individual's mental illness;

(B) the risk of harm the individual evidences, demonstrated either by the individual's behavior or by evidence of severe emotional distress and deterioration in the individual's mental condition to the extent that the individual cannot remain at liberty; and

(C) the detailed information on which the physician based the determination;

(3) the physician issues and signs a written order admitting the individual for emergency detention; and

(4) the individual meets the admission criteria of the SMHF or facility with a CPB.

(d) Release.

(1) The SMHF or facility with a CPB releases the individual accepted for a preliminary examination if:

(A) a preliminary examination of the individual has not been conducted within 12 hours after the individual is apprehended and transported to the facility by the peace officer or transported for emergency detention; or

(B) in accordance with Texas Health and Safety Code §573.023(a), the individual is not admitted for emergency detention on completion of the preliminary examination.

(2) If the SMHF or facility with a CPB does not admit the individual on an emergency detention, the facility contacts the designated LMHA or LBHA to coordinate alternate outpatient community services. The designated LMHA or LBHA must contact the individual within 24 hours of being notified that the individual does not meet inpatient admission criteria to coordinate alternate outpatient community services.

(3) In accordance with Texas Health and Safety Code §576.007(a), if an individual who is an adult is not admitted on emergency detention, the SMHF or facility with a CPB makes a reasonable effort to notify the individual's family, or any other person providing support as authorized by the individual, and LAR, if any, before he or she is released.

(e) Intake assessment. An assessment professional for an SMHF or facility with a CPB conducts an intake assessment as soon as possible, but not later than 24 hours after an individual is admitted for emergency detention. The intake assessment includes:

(1) obtaining relevant information about the individual, including:

(A) psychiatric and medical history;

(B) social history;

(C) symptomology;

(D) support systems;

(E) finances;

(F) third-party coverage or insurance benefits; and

(G) advance directives;

(2) explaining, orally and in writing, the individual's rights described in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(3) explaining, orally and in writing, the SMHF's or facility with a CPB's services and treatment as they relate to the individual;

(4) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008; and

(5) explaining, orally and in writing, the individual trust fund account, charges for services, and the financial responsibility form.

§306.177. Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services.

(a) An SMHF or facility with a CPB admits an individual:

(1) under a protective custody order only if a court has issued a protective custody order in accordance with Texas Health and Safety Code §574.022; or

(2) for court-ordered inpatient mental health services only if a court has issued:

(A) an order for temporary inpatient mental health services issued in accordance with Texas Health and Safety Code §574.034, or Texas Family Code Chapter 55;

(B) an order for extended inpatient mental health services issued in accordance with Texas Health and Safety Code §574.035, or Texas Family Code Chapter 55;

(C) an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Chapter 46B; or

(D) an order for commitment issued in accordance with the Texas Code of Criminal Procedure, Chapter 46C.

(b) If an SMHF or facility with a CPB admits an individual in accordance with subsection (a) of this section, a physician, PA, or APRN issues and signs a written order admitting the individual. Admission of an individual in accordance with subsection (a) of this section is not a medical act and does not require the use of independent medical judgment or treatment by the physician, PA, or APRN issuing and signing the written order.

(c) An SMHF or a facility with a CPB conducts an intake assessment as soon as possible, but not later than 24 hours after the individual is admitted under a protective custody order or court-ordered inpatient mental health services. The intake assessment includes:

(1) obtaining relevant information about the individual, including:

(A) psychiatric and medical history;

(B) social history;

(C) symptomology;

(D) support systems;

(E) finances;

(F) third-party coverage or insurance benefits; and

(G) advance directives; and

(2) explaining, orally and in writing, the individual's rights described in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(3) explaining, orally and in writing, the SMHF's or facility with a CPB's services and treatment as they relate to the individual; and

(4) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008.

§306.178. Voluntary Treatment Following Involuntary Admission.

An SMHF or a facility with a CPB continues to provide inpatient services to an individual involuntarily receiving treatment after the individual is eligible for discharge as described in §306.204 of this subchapter (relating to Discharge of an Individual Involuntarily Receiving Treatment), if, after consultation with the designated LMHA or LBHA:

(1) the SMHF or facility with a CPB obtains written consent for voluntary inpatient services that meets the requirements of a request for voluntary admission, as described in §306.175(a) of this subchapter (relating to Voluntary Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility); and

(2) the individual's treating physician:

(A) examines the individual; and

(B) based on the examination in subparagraph (A) of this paragraph, issues an order for voluntary inpatient services that meets the requirements of §306.175(i) of this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. TRANSFERS AND CHANGING LOCAL MENTAL HEALTH AUTHORITIES OR LOCAL BEHAVIORAL HEALTH AUTHORITIES

26 TAC §§306.191 - 306.195

STATUTORY AUTHORITY

The new sections 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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §534.053 and §534.058.

§306.191. Transfers Between State Mental Health Facilities.

(a) The individual, the individual's LAR, any other person authorized by the individual, SMHF staff, the designated LMHA or LBHA, or another interested person may initiate a request to transfer an individual from one SMHF to another SMHF.

(b) A transfer between SMHFs may occur when deemed advisable by the administrator of the transferring SMHF with the agreement of the administrator of the receiving SMHF based on:

(1) the condition and desires of the individual;

(2) geographic residence of the individual;

(3) program and bed availability; and

(4) geographical proximity to the individual's family and any other person authorized by the individual, and LAR, if any.

(c) An individual voluntarily receiving treatment may not be transferred without the consent of the individual or LAR who made the request for voluntary admission in accordance with §306.175(a)(1) of this subchapter (relating to Voluntary Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility).

(d) If an SMHF transfers an individual receiving court-ordered inpatient mental health services from one SMHF to another SMHF, the transferring SMHF notifies the committing court of the transfer.

(e) If a prosecuting attorney has notified the SMHF administrator that an individual has criminal charges pending, the administrator notifies the judge of the court before which charges are pending if the individual transfers to another SMHF.

(f) 25 TAC Chapter 415, Subchapter G (relating to Determination of Manifest Dangerousness) or HHSC state hospital policies govern transfer of an individual between an SMHF and a maximum-security unit or adolescent forensic unit.

§306.194. Transfers Between a State Mental Health Facility and Another Facility in Texas.

(a) Texas Health and Safety Code §575.011, §575.014, and §575.017 govern transfer of an individual between an SMHF and a psychiatric hospital. An SMHF must not transfer an individual voluntarily receiving treatment without the consent of the individual or LAR who made the request for voluntary admission in accordance with §306.175(a)(1) of this subchapter (relating to Voluntary Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility).

(b) Texas Health and Safety Code §575.015 and §575.017 govern transfer of an individual from an SMHF to a federal correctional facility. The transferring SMHF notifies the designated LMHA or LBHA of the transfer.

(c) Texas Health and Safety Code §575.016 and §575.017 govern transfer of an individual from a facility of the institutional division of the Texas Department of Criminal Justice to an SMHF.

§306.195. Changing Local Mental Health Authorities or Local Behavioral Health Authorities.

(a) Requirements related to an individual currently receiving LMHA or LBHA services who intends to move his or her permanent residence to a county within the local service area of another LMHA or LBHA and seek services from the new LMHA or LBHA.

(1) The originating LMHA or LBHA must:

(A) initiate transition planning with the receiving LMHA or LBHA;

(B) educate the individual on the provisions of this subchapter regarding the individual's transfer, consisting of:

(i) information regarding walk-in intake services, if applicable, where no appointment is scheduled for the individual's initial intake to determine eligibility;

(ii) the individual's rights as eligible for services; and

(iii) the receiving LMHA or LBHA is notified of the individual's intent to move the individual's permanent residence;

(C) assist in facilitating and scheduling the intake appointment at the new LMHA or LBHA once the relocation has been confirmed;

(D) submit to the receiving LMHA or LBHA treatment information pertinent to the individual's continuity of care with submission after the individual's transfer request;

(E) ensure the individual has sufficient medication for up to 90 days or to last until the medication management appointment date at the receiving LMHA or LBHA;

(F) maintain the individual's case in open status in the applicable HHSC automation system for 90 days or until notified that the individual has been admitted to services at the receiving LMHA or LBHA, whichever occurs first;

(G) conduct an intake assessment in accordance with §301.353(a) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and determine whether the LMHA or LBHA has the capacity to serve the individual immediately or place the individual on a waiting list for services; and

(H) authorize an initial 180 days of services for an adult and 90 days for a child or an adolescent for transitioning and ongoing care, including the provision of medications, if the individual is eligible and not on the waiting list.

(2) If the individual seeks services from the new LMHA or LBHA without prior knowledge of the originating LMHA or LBHA:

(A) the receiving LMHA or LBHA must:

(i) initiate transition planning with the originating LMHA or LBHA;

(ii) promptly request records pertinent to the individual's treatment, with the individual's consent, if applicable;

(iii) conduct an intake assessment in accordance with §301.353(a) of this title and determine whether the individual should receive services immediately or be placed on a waiting list for services; and

(iv) if the individual is eligible and the individual is not on the waitlist, authorize an initial 180 days of services for an adult and 90 days for a child or an adolescent for transitioning and ongoing care, including the provision of medications; and

(B) the originating LMHA or LBHA must:

(i) submit requested information to the new LMHA or LBHA within seven days after the request; and

(ii) maintain the individual's case in open status in the applicable HHSC automation system for 90 days or until notified that the individual has been admitted to services at the new LMHA or LBHA, whichever occurs first.

(3) If the new LMHA or LBHA denies services to the individual during the transition period, or reduces or terminates services at the conclusion of the authorized period, the new LMHA or LBHA must notify the individual or LAR in writing within ten business days of the proposed action and the right to appeal the proposed action in accordance with §306.154 of this subchapter (relating to Notification and Appeals Process for Local Mental Health Authority or Local Behavioral Health Authority Services).

(b) Requirements related to an individual receiving inpatient services at an SMHF or facility with a CPB. If an individual at an SMHF or facility with a CPB informs the SMHF or facility with a CPB that the individual intends to move the individual's permanent residence

to a county within the local service area of another LMHA or LBHA and seek services from the new LMHA or LBHA:

(1) the SMHF or facility with a CPB notifies the following of the individual's intent to move the individual's permanent residence upon discharge:

(A) the originating LMHA or LBHA, if the individual was receiving LMHA or LBHA services from the originating LMHA or LBHA before admission to the SMHF or facility with a CPB; and

(B) the new LMHA or LBHA;

(2) the following participate in the individual's discharge planning in accordance with §306.201 of this subchapter (relating to Discharge Planning):

(A) the SMHF or facility with a CPB;

(B) the new LMHA or LBHA; and

(C) the originating LMHA or LBHA, if the individual was receiving LMHA or LBHA services from the originating LMHA or LBHA before admission to the SMHF or facility with a CPB; and

(3) if the individual was receiving LMHA or LBHA services from the originating LMHA or LBHA before admission to the SMHF or facility with a CPB, the originating LMHA or LBHA maintains the individual's case in open status in the applicable HHSC automation system for 90 days or until notified that the individual is admitted to services at the new LMHA or LBHA, whichever occurs first.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 5. DISCHARGE AND ABSENCES FROM A STATE MENTAL HEALTH FACILITY OR FACILITY WITH A CONTRACTED PSYCHIATRIC BED

26 TAC §§306.201 - 306.207

STATUTORY AUTHORITY

The new sections 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. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §534.053 and §534.058.

§306.201. Discharge Planning.

(a) At the time of an individual's admission to an SMHF or facility with a CPB, the designated LMHA or LBHA, if any, and the SMHF or facility with a CPB begins discharge planning for the individual.

(b) The designated LMHA or LBHA continuity of care worker or other designated staff; the designated LIDDA continuity of care worker, if applicable; the individual; the individual's LAR, if any; and any other person authorized by the individual coordinates discharge planning with the SMHF or facility with a CPB.

(1) Except for the SMHF or facility with a CPB treatment team and the individual, involvement in discharge planning may be through teleconference or video-conference calls.

(2) The SMHF or the facility with a CPB must provide a minimum of 24-hour notification before scheduled staffings and reviews to persons involved in discharge planning.

(3) The LMHA, LBHA, or LIDDA, if applicable, and the SMHF or facility with a CPB involved in discharge planning must coordinate all discharge planning activities and ensure the development and completion of the discharge plan before the individual's discharge.

(c) Discharge planning must consist of the following activities:

(1) Considering all pertinent information about the individual's clinical needs, the SMHF or facility with a CPB must identify and recommend specific clinical services and supports needed by the individual after discharge or while on ATP.

(2) The LMHA, LBHA, or LIDDA, if applicable, must identify and recommend specific non-clinical services and supports needed by the individual after discharge, including housing, food, and clothing resources.

(3) If an individual needs a living arrangement, the LMHA or LBHA continuity of care worker must identify a setting consistent with the individual's clinical needs and preference that is available and has accessible services and supports as agreed upon by the individual or the individual's LAR.

(4) The LMHA, LBHA, or LIDDA, if applicable must identify potential providers and resources for the services and supports recommended.

(5) The SMHF or facility with a CPB must counsel the individual and the individual's LAR, if any, to prepare them for care after discharge or while on ATP.

(6) The SMHF or facility with a CPB must provide the individual and the individual's LAR, if any, with written notification of the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008.

(7) The LMHA or LBHA must comply with the Preadmission Screening and Resident Review processes as described in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)) for an individual recommended to move to a nursing facility.

(d) Before an individual's discharge:

(1) The individual's treatment team must develop a discharge plan to include the individual's stated wishes. The discharge plan must consist of:

(A) a description of the individual's living arrangement after discharge, or while on ATP, that reflects the individual's preferences, choices, and available community resources;

(B) arrangements and referrals for the available and accessible services and supports agreed upon by the individual or LAR recommended in the individual's discharge plan;

(C) a written description of recommended clinical and non-clinical services and supports the individual may receive after discharge or while on ATP. The SMHF or facility with a CPB documents arrangements and referrals for the services and supports recommended upon discharge or ATP in the discharge plan;

(D) a description of problems identified at discharge or ATP, including any issues that may disrupt the individual's stability in the community;

(E) the individual's goals, strengths, interventions, and objectives as stated in the individual's discharge plan in the SMHF or facility with a CPB;

(F) comments or additional information;

(G) a final diagnosis based on the current edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association;

(H) the names, contact information, and addresses of providers to whom the individual will be referred for any services or supports after discharge or while on ATP; and

(I) in accordance with Texas Health and Safety Code §574.081(c), a description of:

(i) the types and amount of medication the individual needs after discharge or while on ATP until the individual is evaluated by a physician; and

(ii) the person or entity responsible for providing and paying for the medication.

(2) The SMHF or facility with a CPB must request that the individual or LAR, as appropriate, sign the discharge plan, and document in the discharge plan whether the individual or LAR agree or disagree with the plan.

(3) If the individual or LAR refuses to sign the discharge plan described in paragraph (2) of this subsection, the SMHF or facility with a CPB documents in the individual's record if the individual or LAR agrees to the plan or not, reasons stated, and any other circumstances of the refusal.

(4) If applicable, the individual's treating physician must document in the individual's record reasons why the individual does not require continuing care or a discharge plan in accordance with Texas Health and Safety Code §574.081(g).

(5) If the LMHA or LBHA disagrees with the SMHF or facility with a CPB treatment team's decision concerning discharge:

(A) the treating physician of the SMHF or facility with a CPB consults with the LMHA or LBHA physician or designee to resolve the disagreement within 24 hours;

(B) and if the disagreement continues unresolved:

(i) the medical director or designee of the SMHF or facility with a CPB consults with the LMHA or LBHA medical director; and

(ii) if the disagreement continues unresolved after consulting with the LMHA or LBHA medical director:

(I) the medical director or designee of the SMHF or facility with a CPB refers the issue to the State Hospital System Chief Medical Officer; and

(II) the State Hospital System Chief Medical Officer collaborates with the Medical Director of the Behavioral Health Section to render a final decision within 24 hours of notification.

(e) Discharge notice to family or LAR.

(1) In accordance with Texas Health and Safety Code §576.007, before discharging an individual who is an adult, the SMHF or facility with a CPB makes a reasonable effort to notify the individual's family or any other person providing support as authorized by the individual or LAR, if any, of the discharge if the adult grants permission for the notification.

(2) Before discharging an individual at least 16 years of age or younger than 18 years of age, the SMHF or facility with a CPB makes a reasonable effort to notify the individual's family as authorized by the individual or LAR, if any, of the discharge if the individual grants permission for the notification.

(3) Before discharging an individual younger than 16 years of age, the SMHF or facility with a CPB notifies the individual's LAR of the discharge.

(f) Release of minors. Upon discharge, the SMHF or facility with a CPB may release a minor younger than 16 years of age only to the minor's LAR or the LAR's designee.

(1) If the LAR or the LAR's designee is unwilling to retrieve the minor from the SMHF or facility with a CPB and the LAR is not a state agency:

(A) the SMHF or facility with a CPB:

(i) notifies the Department of Family and Protective Services (DFPS), so DFPS can take custody of the minor from the SMHF or facility with a CPB;

(ii) refers the matter to the local CRCG to schedule a meeting with representatives from the required agencies described in subsection (f)(2)(A) of this section, the LAR, and minor to explore resources and make recommendations; and

(iii) documents the CRCG referral in the discharge plan; and

(B) the medical directors or their designees of the SMHF or facility with a CPB; designated LMHA, LBHA, or LIDDA; and DFPS meet to develop and solidify the discharge recommendations.

(2) If the LAR is a state agency unwilling to assume physical custody of the minor from the SMHF or facility with a CPB, the SMHF or the facility with a CPB:

(A) refers the matter to the local CRCG to schedule a meeting with representatives from the member agencies, in accordance with 40 TAC Chapter 702, Subchapter E (relating to Memorandum of Understanding with Other State Agencies) the LAR, and minor to explore resources and make recommendations; and

(B) documents the CRCG referral in the discharge plan.

(g) Notice to the designated LMHA, LBHA, or LIDDA. At least 24 hours before an individual's planned discharge or ATP, and no later than 24 hours after an unexpected discharge, an SMHF or facility with a CPB notifies the designated LMHA, LBHA, or LIDDA of the anticipated or unexpected discharge and conveys the following information about the individual:

(1) identifying information, including address;

(2) legal status (e.g., regarding guardianship, charges pending, or custody if the individual is a minor);

(3) the day and time the individual will be discharged or on an ATP;

(4) the individual's destination after discharge or ATP;

(5) pertinent medical information;

(6) current medications;

(7) behavioral data, including information regarding COPSD; and

(8) other pertinent treatment information, including the discharge plan.

(h) Discharge packet.

(1) At a minimum, a discharge packet must include:

(A) the discharge plan;

(B) referral instructions, including:

(i) SMHF or facility with a CPB contact person;

(ii) name of the designated LMHA, LBHA, or LIDDA continuity of care worker;

(iii) names of community resources and providers to whom the individual is referred, including contacts, appointment dates and times, addresses, and phone numbers;

(iv) a description of to whom or where the individual is released upon discharge, including the individual's intended residence (address and phone number);

(v) instructions for the individual, LAR, and primary care giver as applicable;

(vi) medication regimen and prescriptions, as applicable; and

(vii) dated signature of the individual or LAR and a member of the SMHF or facility with a CPB treatment team;

(C) copies of all available, pertinent, current summaries, and assessments; and

(D) the treating physician's orders.

(2) At discharge or ATP, the SMHF or facility with a CPB provides a copy of the discharge packet to the individual. Individuals may request additional records. If the requested records are reasonably likely to endanger the individual's life or physical safety, these records can be withheld. Documentation of the determination to withhold records is required in the individual's medical record.

(3) Within 24 hours after discharge or ATP, the SMHF or facility with a CPB sends a copy of the discharge packet to:

(A) the designated LMHA, LBHA, or LIDDA; and

(B) the providers to whom the individual is referred, including:

(i) an LMHA or LBHA network provider, if the LMHA or LBHA is responsible for ensuring the individual's services after discharge or while on an ATP;

(ii) an alternate provider, if the individual requested referral to an alternate provider; and

(iii) a county jail, if the individual will be taken to the county jail upon discharge.

(i) Unexpected Discharge.

(1) The SMHF or facility with a CPB and the designated LMHA, LBHA, or LIDDA must make reasonable efforts to provide discharge planning for an individual discharged unexpectedly.

(2) If there is an unexpected discharge, the facility social worker or a staff with an equivalent credential to a social worker must document the reason for not completing discharge planning activities in the individual's record.

(j) Transportation. An SMHF or facility with a CPB must:

(1) initiate and secure transportation in collaboration with an LMHA or LBHA to a planned location after an individual's discharge; and

(2) inform a designated LMHA, LBHA, or LIDDA of an individual's transportation needs after discharge or an ATP.

(k) Discharge summary.

(1) Within ten days after an individual's discharge, the individual's physician of the SMHF or facility with a CPB completes a written discharge summary for the individual.

(2) Within 21 days after an individual's discharge from a LMHA or LBHA the LMHA or LBHA must complete a written discharge summary for the individual.

(3) Written discharge summary includes:

(A) a description of the individual's treatment and their response to that treatment;

(B) a description of the level of care for services received;

(C) a description of the individual's level of functioning at discharge;

(D) a description of the individual's living arrangement after discharge;

(E) a description of the community services and supports the individual will receive after discharge;

(F) a final diagnosis based on the current edition of the DSM; and

(G) a description of the amount of medication available to the individual, if applicable.

(4) The discharge summary must be sent to the individual's:

(A) designated LMHA, LBHA, or LIDDA, as applicable; and

(B) providers to whom the individual was referred.

(5) Documentation of refusal. If the individual, the individual's LAR, or the individual's caregivers refuse to participate in the discharge planning, the circumstances of the refusal must be documented in the individual's record.

(l) Care after discharge. An individual discharged from an SMHF or facility with a CPB is eligible for:

(1) community transitional services for 90 days if referred to an LMHA or LBHA; or

(2) ongoing services.

§306.202. Special Considerations for Discharge Planning.

(a) Three Admissions Within 180 Days. An individual admitted to an SMHF or a facility with a CPB three times within 180 days is considered at risk for future admission to inpatient services. To prevent the unnecessary admissions to an inpatient facility, the designated LMHA or LBHA must:

(1) during discharge planning, review the individual's previous recovery or treatment plans to determine the effectiveness of the clinical services received;

(2) include in the recovery or treatment plan:

(A) non-clinical supports, such as those provided by a peer specialist or recovery coach, identified to support the individual's ongoing recovery; and

(B) recommendations for services and interventions from the individual's current or previous care plan(s) that support the individual's strengths and goals and prevent unnecessary admission to an SMHF or facility with a CPB;

(3) determine the availability and level of care "type, amount, scope and duration" of clinical and non-clinical supports, such as those provided by a peer specialist or recovery coach, that promote ongoing recovery and prevent unnecessary admission to an SMHF or facility with a CPB; and

(4) consider appropriateness of the individual's continued stay in the SMHF or facility with a CPB.

(b) Nursing Facility Referral or Admission.

(1) In accordance with 42 CFR Part 483, Subpart C, and as described in 40 TAC Chapter 19, Subchapter BB (relating to Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review (PASRR)), a nursing facility must coordinate with the referring entity to ensure the referring entity screens the individual for admission to the nursing facility before the nursing facility admits the individual.

(2) As the referring entity, the SMHF or facility with a CPB must complete a PASRR Level I Screening and forward the completed form in accordance with §303.301 of this title (relating to Referring Entity Responsibilities Related to the PASRR Process).

(3) The LMHA or LBHA must conduct a PASRR Level II Evaluation in accordance with Chapter 303 of this title.

(4) If a nursing facility admits an individual on an ATP, the designated LMHA or LBHA must conduct and document, including justification for its recommendations, the activities described in paragraphs (5) and (6) of this subsection.

(5) The designated LMHA or LBHA must make at least one face-to-face contact with the individual at the nursing facility on an ATP. The contact must consist of:

(A) a review of the individual's record at the nursing facility; and

(B) discussions with the individual and LAR, if any, the nursing facility staff, and other staff who provide care to the individual regarding:

(i) the individual's needs and the care the individual is receiving;

(ii) the ability of the nursing facility to provide the appropriate care;

(iii) the provision of mental health services, if needed by the individual; and

(iv) the individual's adjustment to the nursing facility.

(6) Before the end of the initial ATP period described in §306.206(b)(2) of this subchapter (relating to Absence for Trial Placement), the designated LMHA or LBHA must recommend to the SMHF or facility with a CPB one of the following:

(A) discharging the individual if the LMHA or LBHA determines that:

(i) the nursing facility is capable and willing to provide appropriate care to the individual after discharge;

(ii) any mental health services needed by the individual are being provided to the individual while residing in the nursing facility; and

(iii) the individual and LAR, if any, agrees to the nursing facility admission;

(B) extending the individual's ATP period in accordance with §306.206(b)(3) of this subchapter;

(C) returning the individual to the SMHF or facility with a CPB in accordance with §306.205 of this subchapter (relating to Pass or Furlough from a State Mental Health Facility or a Facility with a Contracted Psychiatric Bed); or

(D) initiating involuntary admission to the SMHF or facility with a CPB in accordance with §306.176 (relating to Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility for Emergency Detention) and §306.177 (relating to Admission Criteria Under Order of Protective Custody or Court-ordered Inpatient Mental Health Services) of this subchapter.

(c) Assisted Living.

(1) An SMHF, facility with a CPB, LMHA, or LBHA may not refer an individual to an assisted living facility that is not licensed under the Texas Health and Safety Code, Chapter 247.

(2) As required by Texas Health and Safety Code §247.063(b), if an SMHF, facility with a CPB, LMHA, or LBHA gains knowledge of an assisted living facility not operated or licensed by the state, the SMHF, facility with a CPB, LMHA, or LBHA reports the name, address, and telephone number of the facility to HHSC Complaint and Incident Intake at 1-800-458-9858.

(d) Minors.

(1) To the extent permitted by medical privacy laws, the SMHF or facility with a CPB and designated LMHA or LBHA must make a reasonable effort to involve a minor's LAR or the LAR's designee in the treatment and discharge planning process.

(2) A minor committed to or placed in an SMHF or facility with a CPB under Texas Family Code, Chapter 55, Subchapter C or D, shall be discharged in accordance with the Texas Family Code, Chapter 55, Subchapter C or D as applicable.

(e) An individual suspected of having an ID. If an SMHF or facility with a CPB suspects an individual has an ID, the SMHF or facility with a CPB must notify the designated LMHA or LBHA continuity of care worker and the designated LIDDA to:

(1) assign a LIDDA continuity of care worker to the individual; and

(2) conduct an assessment in accordance with 40 TAC Chapter 5, Subchapter D (relating to Diagnostic Assessment).

(f) Criminal Code.

(1) Texas Code of Criminal Procedure, Chapter 46B: Incompetency to stand trial.

(A) The SMHF or facility with a CPB must discharge an individual committed under Texas Code of Criminal Procedure, Article 46B.102 (relating to Civil Commitment Hearing: Mental Illness), in accordance with Texas Code of Criminal Procedure, Article 46B.107 (relating to Release of Defendant after Civil Commitment).

(B) The SMHF or facility with a CPB must discharge an individual committed under Texas Code of Criminal Procedure, Article 46B.073 (relating to Commitment for Restoration to Competency), in accordance with Texas Code of Criminal Procedure, Article 46B.083 (relating to Supporting Commitment Information Provided by Facility or Program).

(C) For an individual committed under Texas Code of Criminal Procedure, Chapter 46B, discharged and returned to the committing court, the SMHF or facility with a CPB, within 24 hours after discharge, must notify the following of the discharge:

(i) the individual's designated LMHA or LBHA; and

(ii) the TCOOMMI.

(2) Texas Code of Criminal Procedure, Chapter 46C: Insanity defense. An SMHF or facility with a CPB must discharge an individual acquitted by reason of insanity and committed to an SMHF or facility with a CPB under Texas Code of Criminal Procedure, Chapter 46C, only upon order of the committing court in accordance with Texas Code of Criminal Procedure, Article 46C.268.

(g) Offenders with special needs following discharge from an SMHF or facility with a CPB. The LMHA or LBHA must comply with the requirements as defined by the LMHA's and LBHA's TCOOMMI contract for offenders with special needs.

(1) An LMHA or LBHA that receives a referral for an offender with special needs in the MH priority population from a county or city jail at least 24 hours before the individual's release must complete one of the following actions:

(A) if the offender with special needs is currently receiving LMHA or LBHA services, the LMHA or LMHA:

(i) notifies the offender with special needs of the county or city jail's referral;

(ii) arranges a face-to-face contact between the offender with special needs and a QMHP-CS to occur within 15 days after the individual's release; and

(iii) ensures that the QMHP-CS, at the face-to-face contact, re-assesses the individual and arranges for appropriate services, including transportation needs at the time of release.

(B) if the individual is not currently receiving LMHA or LBHA services from the LMHA or LBHA that is notified of the referral, the LMHA or LMHA:

(i) ensures that at the face-to-face contact required in subparagraph (A) of this paragraph, the QMHP-CS conducts a pre-admission assessment in accordance with §301.353(a) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization); and

(ii) complies with §306.161(b) of this subchapter (relating to Screening and Assessment), as appropriate; or

(C) if the LMHA or LBHA does not conduct a face-to-face contact with the individual, the LMHA or LMHA must document the reasons for not doing so in the individual's record.

(2) If an LMHA or LBHA is notified of the anticipated release from prison or a state jail of an offender with special needs in the MH priority population who is currently taking psychoactive medication(s) for a mental illness and who will be released with a 30-day supply of the psychoactive medication(s), the LMHA or LBHA must arrange a face-to-face contact between the individual and QMHP-CS within 15 days after the individual's release.

(A) If the offender with special needs is released from state prison or state jail after hours or the LMHA or LBHA is otherwise unable to schedule the face-to-face contact before the individual's release, the LMHA or LBHA makes a good faith effort to locate and contact the individual. If the designated LMHA or LBHA does not have a face-to-face contact with the individual within 15 days, the LMHA or LBHA must document the reasons for not doing so in the individual's record.

(B) At the face-to-face contact:

(i) the QMHP-CS with appropriate supervision and training must perform an assessment in accordance with §301.353(a) of this title and comply with §306.161(b) and (c) of this subchapter, as appropriate; and

(ii) if the LMHA or LBHA determines that the offender with special needs should receive services immediately, the LMHA or LBHA must arrange for the individual to meet with a physician or designee authorized by state law to prescribe medication before the individual requires a refill of the prescription.

(C) If the LMHA or LBHA does not conduct a face-to-face contact with the offender with special needs, the LMHA or LBHA must document the reasons for not doing so in the individual's record.

(3) If the offender with special needs is on parole or probation, the SMHF or facility with a CPB must notify a representative of TCOOMMI before the discharge of the individual known to be on parole or probation.

§306.203. Discharge of an Individual Voluntarily Receiving Treatment.

(a) An SMHF or facility with a CPB must discharge an individual voluntarily receiving treatment if the administrator or designee of the SMHF or facility with a CPB concludes that the individual can no longer benefit from inpatient services based on the physician's determination, as delineated in Division 5 of this subchapter (relating to Discharge and Absences from a State Mental Health Facility or Facility with a Contracted Psychiatric Bed).

(b) If a written request for discharge is made by an individual voluntarily receiving treatment or the individual's LAR:

(1) the SMHF or facility with a CPB must discharge the individual in accordance with Texas Health and Safety Code §572.004; and

(2) the individual or individual's LAR signs, dates, and documents the time on the discharge request.

(c) In accordance with Texas Health and Safety Code §572.004, if an individual informs a staff member of an SMHF or facility with a CPB of the individual's desire to leave the SMHF or facility with a CPB, the SMHF or facility with a CPB must:

(1) as soon as possible, assist the individual in creating the written request and obtaining the necessary signature; and

(2) within four hours after a written request is made known to the SMHF or facility with a CPB, notify:

(A) the treating physician; or

(B) another physician who is an SMHF or facility with a CPB staff member, if the treating physician is not available during that time period.

(d) Results of physician notification required by subsection (c)(3) of this section.

(1) In accordance with Texas Health and Safety Code §572.004(c) and (d):

(A) an SMHF or facility with a CPB, based on a physician's determination, must discharge an individual within the four-hour time period described in subsection (c)(2) of this section; or

(B) if the physician who is notified in accordance with subsection (c)(2) of this section has reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention, the physician must examine the individual as soon as possible, but no later than 24 hours, after the request for discharge is made known to the SMHF or facility with a CPB.

(2) Reasonable cause to believe that the individual may meet the criteria for court-ordered inpatient mental health services or emergency detention.

(A) If a physician does not examine an individual who may meet the criteria for court-ordered inpatient mental health services or emergency detention within 24 hours after the request for discharge is made known to the SMHF or the facility with a CPB, the facility must discharge the individual.

(B) If a physician, in accordance with Texas Health and Safety Code §572.004(d), examines the individual as described in paragraph (1)(B) of this subsection and determines that the individual does not meet the criteria for court-ordered inpatient mental health services or emergency detention, the SMHF or the facility with a CPB discharges the individual upon completion of the examination.

(C) If a physician, in accordance with Texas Health and Safety Code §572.004(d), examines the individual as described in paragraph (1)(B) of this subsection and determines that the individual meets the criteria for court-ordered inpatient mental health services or emergency detention, the SMHF or the facility with a CPB, by 4:00 p.m. on the next business day:

(i) if the SMHF or facility with a CPB intends to detain the individual, to file an application and obtain a court order for further detention of the individual in accordance with Texas Health and Safety Code §572.004(d), the physician:

(I) files an application for court-ordered inpatient mental health services or emergency detention and obtains a court order for further detention of the individual;

(II) notifies the individual of such intention; and

(III) documents in the individual's record the reasons for the decision to detain the individual; or

(ii) discharges the individual.

(e) In accordance with Texas Health and Safety Code §572.004(i), after a written request from a minor individual admitted under §306.175(a)(1)(B) of this subchapter (relating to Voluntary Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility), the SMHF or facility with a CPB must:

(1) notify the minor's parent, managing conservator, or guardian of the request and:

(A) if the minor's parent, managing conservator, or guardian objects to the discharge, the minor continues treatment as a patient receiving voluntary treatment; or

(B) if the minor's parent, managing conservator, or guardian does not object to the discharge, the minor individual is discharged; and

(2) document the request in the minor's record.

(f) In accordance with Texas Health and Safety Code §572.004(f)(1), an SMHF or facility with a CPB is not required to complete the requirements described in this section if the individual makes a written statement withdrawing the request for discharge.

§306.204. Discharge of an Individual Involuntarily Receiving Treatment.

(a) Discharge from emergency detention.

(1) Except as provided by §306.178 of this subchapter (relating to Voluntary Treatment Following Involuntary Admission) and in accordance with Texas Health and Safety Code §573.021(b) and §573.023(b), an SMHF or facility with a CPB immediately discharges an individual under emergency detention if:

(A) the SMHF administrator, administrator of the facility with a CPB, or designee concludes, based on a physician's determination, the individual no longer meets the criteria in §306.176(c)(1) of this subchapter (relating to Admission Criteria for a Facility with a Contracted Psychiatric Bed Authorized by an LMHA or LBHA or for a State Mental Health Facility for Emergency Detention); or

(B) except as provided in paragraph (2) of this subsection:

(i) 48 hours has elapsed from the time the individual was presented to the SMHF or facility with a CPB; and

(ii) the SMHF or facility with a CPB has not obtained a court order for further detention of the individual.

(2) In accordance with Texas Health and Safety Code §573.021(b), if the 48-hour period described in paragraph (1)(B)(i) of this subsection ends on a Saturday, Sunday, or legal holiday, or before 4:00 p.m. on the next business day after the individual was presented to the SMHF or facility with a CPB, the SMHF or facility with a CPB detains the individual until 4:00 p.m. on such business day.

(b) Discharge under order of protective custody. Except as provided by §306.178 of this subchapter and in accordance with Texas Health and Safety Code §574.028, an SMHF or facility with a CPB immediately discharges an individual under an order of protective custody if:

(1) the SMHF administrator, facility with a CPB administrator, or designee determines that, based on a physician's determination, the individual no longer meets the criteria described in Texas Health and Safety Code §574.022(a);

(2) the SMHF administrator, facility with a CPB administrator, or designee does not receive notice that the individual's continued detention is authorized after a probable cause hearing held within the time period prescribed by Texas Health and Safety Code §574.025(b);

(3) a final order for court-ordered inpatient mental health services has not been entered within the time period prescribed by Texas Health and Safety Code §574.005; or

(4) an order to release the individual is issued in accordance with Texas Health and Safety Code §574.028(a).

(c) Discharge under court-ordered inpatient mental health services.

(1) Except as provided by §306.178 of this subchapter and in accordance with Texas Health and Safety Code §574.085 and §574.086(a), an SMHF or facility with a CPB immediately discharges an individual under a temporary or extended order for inpatient mental health services if:

(A) the order for inpatient mental health services expires; or

(B) the SMHF administrator, administrator of the facility with a CPB, or designee concludes that, based on a physician's determination, the individual no longer meets the criteria for court-ordered inpatient mental health services.

(2) In accordance with Texas Health and Safety Code §574.086(b), before discharging an individual in accordance with paragraph (1) of this subsection, the SMHF administrator, administrator of the facility with a CPB, or designee considers whether the individual should receive court-ordered outpatient mental health services in accordance with a modified order described in Texas Health and Safety Code §574.061.

(3) Individuals committed under Texas Code of Criminal Procedure, Chapter 46B or 46C may only be discharged as provided by §306.202(f) of this division (relating to Special Considerations for Discharge Planning).

(d) Discharge packet. An SMHF administrator, administrator of a facility with a CPB, or designee forwards a discharge packet, as provided in §306.201(h) of this division (relating to Discharge Planning), of any individual committed under the Texas Code of Criminal Procedure to the jail and the LMHA or LBHA in conjunction with state and federal privacy laws.

§306.205. Pass or Furlough from a State Mental Health Facility or a Facility with a Contracted Psychiatric Bed.

(a) In accordance with Texas Health and Safety Code §574.082, an SMHF administrator, administrator of a facility with a CPB, or designee may, in coordination with the designated LMHA or LBHA, authorize absences for an individual involuntarily admitted under court order for inpatient mental health services.

(1) If an individual's authorized absence is to exceed 72 hours, the SMHF or facility with a CPB notifies the committing court of the absence.

(2) The SMHF or facility with a CPB may not authorize an absence that exceeds the expiration date of the individual's order for inpatient mental health services.

(b) In accordance with Texas Health and Safety Code §574.083, an SMHF or facility with a CPB detains or readmits an individual if the SMHF administrator, administrator of the facility with a CPB, or the administrator's designee issues a certificate or affidavit establishing that the individual is receiving court-ordered inpatient mental health services and:

(1) the individual is absent without authority from the SMHF or facility with a CPB;

(2) the individual has violated the conditions of the absence; or

(3) the individual's condition has deteriorated to the extent that the individual's continued absence from the SMHF or facility with a CPB is inappropriate and there is a question of competency or willingness to consent to return, then the designated LMHA or SMHF must initiate involuntary admission in accordance with Texas Health and Safety Code, Chapter 573 or 574.

(c) In accordance with Texas Health and Safety Code §574.084, an individual's authorized absence that exceeds 72 hours may be revoked only after an administrative hearing held in accordance with this subsection.

(1) The SMHF or facility with a CPB conducts a hearing by a hearing officer who is a mental health professional not directly involved in treating the individual.

(2) The SMHF or facility with a CPB:

(A) holds an informal hearing within 72 hours after the individual returns to the facility;

(B) provides the individual and facility staff members an opportunity to present information supporting their position; and

(C) provides the individual the option to select another person or staff member to serve as the individual's advocate.

(3) Within 24 hours after the conclusion of the hearing, the hearing officer:

(A) determines if the individual violated the conditions of the authorized absence, the authorized absence was justified, or the individual's condition deteriorated to the extent the individual's continued absence was inappropriate; and

(B) renders the final decision in writing, including the basis for the hearing officer's decision.

(4) If the hearing officer's decision does not revoke the authorized absence, the individual may leave the SMHF or facility with a CPB pursuant to the conditions of the absence.

(5) The SMHF or facility with a CPB ensures the individual's record includes a copy of the hearing officer's report.

(d) Except in medical emergencies, only the committing criminal court may grant absences from a SMHF or facility with a CPB for individuals committed under Texas Code of Criminal Procedure, Chapter 46B or 46C.

§306.206. Absence for Trial Placement.

(a) An individual who is under consideration for discharge as described in §306.203 of this division (relating to Discharge of an Individual Voluntarily Receiving Treatment) or §306.204(c) of this division (relating to Discharge of an Individual Involuntarily Receiving Treatment), may leave the SMHF or facility with a CPB on ATP if the SMHF or facility with a CPB and the designated LMHA or LBHA agree that an ATP will be beneficial in implementing the individual's recovery or treatment plan. The designated LMHA or LBHA is responsible for monitoring the individual while on ATP.

(b) Time frames for ATP.

(1) An individual admitted under court-ordered inpatient mental health services may not be on ATP beyond the expiration date of the individual's order for inpatient mental health services.

(2) The initial ATP period for any individual may not exceed 30 days.

(3) The SMHF or facility with a CPB may extend an initial ATP period up to 30 days if:

(A) requested by the designated LMHA or LBHA; and

(B) clinically justified.

(4) Approval by the following persons is required for any ATP that exceeds 60 days:

(A) the SMHF administrator or designee, or the administrator of the facility with a CPB or designee; and

(B) the designated LMHA or LBHA executive director or designee.

(c) Only the committing criminal court may grant ATP from the SMHF or facility with a CPB for individuals committed under Texas Code of Criminal Procedure, Chapter 46B or 46C.

§306.207. Post Discharge or Absence for Trial Placement: Contact and Implementation of the Recovery or Treatment Plan.

The designated LMHA or LBHA is responsible for contacting the individual following discharge or ATP from an SMHF or a facility with a CPB and for implementing the individual's recovery or treatment plan in accordance with this section.

(1) LMHA or LBHA contact after discharge or ATP.

(A) The designated LMHA or LBHA makes face-to-face contact with an individual within seven days after discharge or ATP of an individual who is:

(i) discharged or on ATP from an SMHF or facility with a CPB and referred to the LMHA or LBHA for services or supports as indicated in the recovery or treatment plan;

(ii) discharged from an LMHA or LBHA-network provider of inpatient services and referred to the LMHA or LBHA for services or supports as indicated in the recovery or treatment plan;

(iii) discharged from an alternate provider of inpatient services and receiving LMHA or LBHA services from the designated LMHA or LBHA at the time of admission and who, upon discharge, is referred to the LMHA or LBHA for services or supports as indicated in the recovery or treatment plan;

(iv) discharged from the LMHA's or LBHA's crisis stabilization unit or any overnight crisis facility and referred to the LMHA or LBHA for services or supports as indicated in the discharge plan; or

(v) an offender with special needs discharged from an SMHF or facility with a CPB returning to jail.

(B) At the face-to-face contact after discharge required by subparagraph (A) of this paragraph, the designated LMHA or LBHA:

(i) re-assesses the individual;

(ii) ensures the provision of the services and supports specified in the individual's recovery or treatment plan by making the services and supports available and accessible as determined by the individual's level of care; and

(iii) assists the individual in accessing the services and supports specified in the individual's recovery or treatment plan.

(C) The designated LMHA or LBHA develops or reviews an individual's recovery or treatment plan in accordance with §301.353(e) of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization) and considers treatment recommendations in the SMHF or facility with a CPB's discharge plan within ten business days after the face-to-face contact required by subparagraph (A) of this paragraph.

(D) The designated LMHA or LBHA makes a good faith effort to locate and contact an individual who fails to appear for a face-to-face contact required by subparagraph (A) of this paragraph. If the designated LMHA or LBHA does not have a face-to-face contact with the individual, the LMHA or LBHA documents the attempts made and reasons the face-to-face contact did not occur in the individual's record.

(2) For an individual whose recovery or treatment plan identifies the designated LMHA or LBHA as responsible for providing or paying for the individual's psychoactive medications, the designated LMHA or LBHA is responsible for ensuring:

(A) the provision of psychoactive medications for the individual; and

(B) the individual has an appointment with a physician or designee authorized by state law to prescribe medication before the earlier of the following events:

(i) the individual's supply of psychoactive medication from the SMHF or facility with a CPB has been depleted; or

(ii) the 15th day after the individual is on ATP or discharged from the SMHF or facility with a CPB.

(3) The designated LMHA or LBHA documents in an individual's record the LMHA's or LBHA's activities described in this section, and the individual's responses to those activities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 6. TRAINING

26 TAC §306.221

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. In addition, Texas Health and Safety Code §534.053 requires the Executive Commissioner of HHSC to adopt rules ensuring the provision of community-based mental health services and §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractors.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §534.053 and §534.058.

§306.221. Screening and Intake Assessment Training Requirements at a State Mental Health Facility and a Facility with a Contracted Psychiatric Bed.

(a) Screening training. As required by Texas Health and Safety Code §572.0025(e), an SMHF or facility with a CPB staff member whose responsibilities include conducting a screening described in Division 3 of this subchapter (relating to Admission to a State Mental Health Facility or Facility with a Contracted Psychiatric Bed--Provider Responsibilities) must receive at least eight hours of training in the SMHF's or facility with a CPB's screening.

(1) The screening training must provide instruction regarding:

(A) obtaining relevant information about the individual, including information about finances, third-party coverage or insurance benefits, and advance directives;

(B) explaining, orally and in writing, the individual's rights described in 25 TAC Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(C) explaining, orally and in writing, the SMHF's or facility with a CPB's services and treatment as they relate to the individual;

(D) explaining, orally and in writing, the existence, purpose, telephone number, and address of the protection and advocacy system established in Texas, pursuant to Texas Health and Safety Code §576.008; and

(E) determining whether an individual comprehends the information provided in accordance with subparagraphs (B) - (D) of this paragraph.

(2) Up to six hours of the following training may count toward the screening training required by this subsection:

(A) 25 TAC §417.515 (relating to Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation); and

(B) 25 TAC §404.165 (relating to Staff Training in Rights of Persons Receiving Mental Health Services).

(b) Intake assessment training. As required by Texas Health and Safety Code §572.0025(e), if an SMHF or facility with a CPB's internal policy permits an assessment professional to determine whether a physician should conduct an examination on an individual requesting voluntary admission, the assessment professional must receive at least eight hours of training in conducting an intake assessment pursuant to this subchapter.

(1) The intake assessment training must provide instruction regarding assessing and diagnosing in accordance with §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization).

(2) An assessment professional must receive intake training:

(A) before conducting an intake assessment; and

(B) annually throughout the professional's employment or association with the SMHF or facility with a CPB.

(c) Documentation of training. An SMHF or facility with a CPB must document that each staff member and each assessment professional whose responsibilities include conducting the screening or intake assessment have successfully completed the training described in subsections (a) and (b) of this section, including:

(1) the date of the training;

(2) the length of the training session; and

(3) the name of the instructor.

(d) Performance in accordance with training. Each staff member and each assessment professional whose responsibilities include conducting the screening or intake assessment must perform the assessments in accordance with the training required by 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.

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER D. REPORTS AND RECORD KEEPING

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §748.301, new §748.301, amendments to §748.303 and §748.313, and new Division 6, Unauthorized Absences, consisting of new §§748.451, 748.453, 748.455, 748.457, 748.459, 748.461, and 748.463.

New §§748.301, 748.453, 748.455, 748.461, and 748.463; and amendments to §748.303 are adopted with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8200). These rules will be republished.

The repeal of §748.301; amendments to §748.313; and new §§748.451, 748.457, and 748.459 are adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8200). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal, amendments, and new sections will address the issue of unauthorized absences of children from General Residential Operations (GROs) by requiring GROs to take additional actions when a child leaves the operation without permission (unauthorized absence). Current rules require GROs to document when a child is absent and cannot be located for a specified timeframe, depending on the age and development level of the child. The repeal, amendments, and new sections will include additional requirements, such as: documenting each time a child has an unauthorized absence, regardless of the length of time the child is absent; maintaining an annual log of each unauthorized absence; debriefing the child after each unauthorized absence; conducting a triggered review for each child who has had three unauthorized absences within a 60-day timeframe, to examine alternatives and create a written plan to reduce the number of unauthorized absences; and conducting an evalua-

tion, every six months, of the frequency and patterns of unauthorized absences within each GRO.

COMMENTS

The 31-day comment period ended January 27, 2020. During this period, HHSC received comments regarding the proposed rules from seven commenters, including Upbring, Willow Bend Center, Texas Alliance for Child and Family Services, Disability Rights Texas, Texas Appleseed, Devereux Advanced Behavioral Health Texas, and the Texas Department of Family and Protective Services (DFPS). Several of the commenters had multiple comments. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Four commenters generally supported the intent and purpose of the rule changes, which further trauma informed practices for tracking and caring for children who run away from residential care.

Response: HHSC appreciates the support of the rules.

Comment: Two commenters generally commented on the new review process. Both commenters recommended a more robust process, which would include an outside review of reoccurring unauthorized absences. One of the commenters specifically recommended a review by DFPS specialists; making the annual summary log available to outside experts, regardless of whether the Child Care Licensing Department of HHSC (Licensing) requested the log; requiring outside experts to participate in triggered reviews; requiring a triggered review after two unauthorized absences (the commenter did not note a timeframe for the triggered review to occur) instead of after three unauthorized absences within a 60-day timeframe; and reporting triggered reviews to Licensing. The second commenter recommended that a more robust process include outside reviews to determine whether the operation has any undetected issues, address unmet needs or hidden abuse or neglect, and determine how unauthorized absences affect the child's service plan.

Response: HHSC disagrees with the comments and declines to revise the rules, including not revising the proposed requirement of a triggered review after three unauthorized absences within 60 days. However, HHSC understands that the triggered review process will be new and may require revisions in the future. The commenters may not understand the respective roles of Licensing and DFPS. Because Licensing's role is regulatory, Licensing must create a process whereby an operation is responsible for implementing actions that prevent future unauthorized absences, regardless of whether the operation cares for children who are in DFPS conservatorship. Additionally, Licensing does not regulate DFPS oversight of children in the role of a managing conservator. Regarding the comment that a DFPS specialist participate in the review, new §748.459 requires an operation to notify the parent of a child, which is defined as "a person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian," at least two weeks before the triggered review. In addition to the triggered review described in these rules, DFPS has a process for a child in DFPS conservatorship where DFPS staff, the child, and other supports for the child meet. This meeting allows the child an opportunity to discuss how DFPS can support the child so unauthorized absences do not continue to occur (sometimes called a Recovery Round Table). With respect to the possibility of outside reviews, an operation cannot make an annual summary log available to outside experts since the logs are confidential because they contain the names of multiple children. Regarding reporting triggered reviews to Licensing, the Licensing oversight of the process will occur through routine monitoring inspections and investigations and does not require the operation to report each triggered review to Licensing. DFPS will have an opportunity to monitor what transpires during a triggered review when DFPS is invited to attend in its role as the managing conservator of children.

Comment: Regarding §748.301(3), three commenters wanted further clarification regarding the definition of an "unauthorized absence." The concerns whether an operation must report a child as an unauthorized absence if the child is still on the operation's grounds, but not where the child is authorized to be; if the child is still within the eyesight of the operation's staff, even if the child is off of the operation's grounds; or if the staff lose sight of the child and the child is off the operation's grounds.

Response: HHSC agrees in part and disagrees in part with the comment. HHSC wrote the definition with some flexibility, because operations will have to exercise discretion based on the history of the child. The definition of an "unauthorized absence" has two parts. First, the child must be absent from the operation without permission. Second, staff cannot locate the child. Although an "operation" would include an operation's grounds, HHSC agrees to clarify that the child must be absent from "the grounds of" an operation and revises the rule accordingly. It is already sufficiently clear that staff can locate a child who is within their eyesight, so this would not be an unauthorized absence. Although the issue may be more complicated when a child is not within the eyesight of staff, operations can use their best judgment based on the totality of the circumstances on a case-by-case basis to determine if there is an unauthorized absence. For example, if a teenager is routinely late in returning to the operation from an extracurricular activity, the operation would likely take this routine into account when assessing the possibility of an unauthorized absence. HHSC declines to make any other revisions to the rule but will add to the Minimum Standards on the HHSC Provider webpage a Helpful Information box after the rule to further clarify the issue.

Comment: Regarding §748.303 generally, one commenter stated that the current reporting structure does not capture all relevant unauthorized absences, which could be instrumental in preventing future unauthorized absences. The commenter did not request any rule changes.

Response: It is true that operations do not currently report all unauthorized absences to Licensing, which is why HHSC proposed these rule changes. New §748.303(c), and other rule changes, will now require all operations to document any unauthorized absences that are not reported to Licensing, debrief the child after every unauthorized absence, have triggered reviews under certain circumstances, and have overall operation evaluations every six months.

Comment: Regarding §748.303(a)(6), one commenter stated that "being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained" should not be excluded from being reported to Licensing and the child's parent (the definition of a parent also includes the managing conservator of the child, which in many instance is DFPS), because DFPS and the operation are poised to help improve service plans for youth and need to be aware of any involvement with law enforcement.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider

the comment during the current comprehensive review project for Chapter 748. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §748.303(a)(8) and (9), three commenters stated the timeframes for reporting unauthorized absences of children 6 - 12 years old to law enforcement should be changed from two hours to immediately, and for children 13 years old and older should be changed from six hours to immediately, but no later than two hours after the child is not on the operation's grounds. Two commenters want this absence reported even if the child is no longer missing.

Response: HHSC did not propose these paragraphs for change and declines to revise them at this time. However, Licensing will consider the comments during the current comprehensive review project for Chapter 748. This will ensure the public has the opportunity to comment on any proposed changes. Note: The timeframe for reporting unauthorized absences of children 13 years old and older was changed from 24 hours to six hours, in 2017.

Comment: Regarding §748.303(d)(1), one commenter stated that directing operations to report serious incidents of adult residents to law enforcement "as outlined in the chart above" is ambiguous because the chart discusses minors.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 748. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §748.303(d)(2), one commenter stated that directing operations to report serious incidents of adult residents to the parent is only correct if the parent is the legally authorized representative. If not, and the adult resident is incapable of making decisions about their own care, the case should be reported to the Probate Court, or other appropriate court, for resolution.

Response. HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 748. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §748.303(e)(5), one commenter stated that §748.303(e)(5) and §749.503(e)(5) have slight variations in the wording, which causes the rule to be unclear and vague.

Response: HHSC agrees with the comment and is making the recommended revisions. Though HHSC did not propose this paragraph for change, the revisions are editorial and do not change the meaning of the rule.

Comment: Regarding §748.313(2), one commenter stated the documentation requirements for a short personal restraint that results in substantial physical injury should be consistent with the emergency behavior intervention documentation requirements in §748.2855.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 748. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §748.453(a), one commenter wanted to know if HHSC will provide an outline or spreadsheet with the requirements of the annual summary log.

Response: HHSC will provide a sample form that includes the requirements for the annual summary log.

Comment: Regarding §748.453(a)(5), one commenter suggested adding the police report number to the annual summary log when law enforcement is contacted and adding an intake report number for unauthorized absences reported to Licensing or DFPS.

Response: HHSC agrees with the comment and revises the rule accordingly.

Comment: Regarding §748.455(a), one commenter wondered if the operation could use a Recovery Round Table held by DFPS in place of the required debriefing of a child.

Response: No revision to the rule is required. Though a DFPS Recovery Round Table may be similar to the required debriefing, the operation cannot use it in place of the debriefing because the Recovery Round Table does not have to be completed immediately, the requirements of the round table are not identical to the requirements of a debriefing, and the round table is not regulated by Licensing.

Comment: Regarding §§748.455(a)(2), 748.461(3), and 748.463(b)(1) and (c)(2), one commenter stated the most effective services that an operation provides are evidence-based, trauma informed supports that aim to address a child's behavioral symptoms prior to or during placement. The commenter stated that the strategies that a child can use to avoid future unauthorized absences, and those used in triggered reviews and overall evaluations, should be evidence-based and trauma informed.

Response: HHSC agrees in part and disagrees in part with the comment. An operation must already integrate trauma informed practices into the care, treatment, and management of each child (See §748.1337(a)). Accordingly, HHSC agrees that any strategies or alternatives used to prevent unauthorized absences, and the environment that supports positive and constructive behavior of children in care, must be trauma informed. HHSC revises the rules to make the requisite revisions regarding trauma informed care. However, determining whether these strategies or alternatives are evidence-based would be difficult if not impossible to verify; therefore, HHSC declines to revise the rules to include the term "evidence-based."

Comment: Regarding §748.455(a)(4), one commenter suggested an addition to the rule stating that if a child discloses that abuse or neglect occurred during an unauthorized absence, then the caregiver or other person conducting the debriefing should end the debriefing and report the allegation to DFPS.

Response: HHSC appreciates the commenter's sensitivity to the DFPS responsibility for investigating allegations of abuse and neglect. Accordingly, HHSC will add a helpful information box to the Minimum Standards on the HHSC Provider webpage to clarify that if a child discloses that abuse or neglect may have occurred during an unauthorized absence, the caregiver or other person conducting the debriefing must make a report to DFPS and not ask additional questions regarding the abuse and neglect. However, the caregiver or other person conducting the debriefing, must complete the remaining requirements of the debriefing.

Comment: Regarding §748.455(b), one commenter was against all children returning to routine activities after an unauthorized absence, because doing so would increase the risk of another unauthorized absence and send the message that there are no consequences for this high-risk behavior. The commenter suggested allowing for restriction of routine activities, for at least a few days, without a treatment team decision and up to 30 days with a treatment team review.

Response: HHSC disagrees with the comment and declines to revise the rule. Preventing a child from going back to routine activities does not meet the current requirement of trauma informed care. In addition, the rule already provides an exception when a caregiver determines and documents that a particular routine activity would be inappropriate because of the child's condition following an unauthorized absence, or something that occurred during the unauthorized absence.

Comment: Regarding §748.463, one commenter wanted to know if HHSC would provide a form for the six-month overall operation evaluation.

Response: HHSC will not provide a sample form, because an overall operation evaluation could be very different from one operation to another.

Comment: One commenter stated that the fiscal impact did not include any impact regarding the provider's and DFPS case worker's time involved in debriefings (§748.455) and triggered reviews (§748.459).

Response: HHSC disagrees with the comment and no revisions to the rule will be made. HHSC assumes that, as a best practice, all providers and DFPS caseworkers currently debrief a child after an unauthorized absence. During a workgroup meeting, this assumption was verified. The new rule (§748.455) does specify what a debriefing must consist of, but the rule does not contemplate that additional time will be required to complete the debriefing. HHSC costed out an operation's case manager's time in the fiscal impact for triggered reviews (§748.459). This rule also requires participation of the person that is designated to make decisions regarding the child's participation in childhood activities. This person may or may not be employed by the provider. If employed by the provider, the costs would be very similar to the case manager's costs. The participation of DFPS caseworkers is not mandatory. However, as DFPS is currently focusing resources on issues with unauthorized absences, it is anticipated that any additional duties can be absorbed within existing resources.

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §748.301

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Human Resources Code (HRC), §42.042, which provides that the Executive Commissioner of HHSC shall adopt rules to carry out the provisions of HRC, Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §§748.301, 748.303, 748.313

STATUTORY AUTHORITY

The amendments and new section 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, and Human Resources Code (HRC), §42.042, which provides that the Executive Commissioner of HHSC shall adopt rules to carry out the provisions of HRC, Chapter 42.

§748.301. What do certain terms mean in this subchapter?

These terms have the following meanings in this subchapter:

(1) Serious incident--A non-routine occurrence that has or may have dangerous or significant consequences for the care, supervision, or treatment of a child. The different types of serious incidents are noted in §748.303 of this division (relating to When must I report and document a serious incident?).

(2) Triggered review of a child's unauthorized absences--A review of a specific child's pattern of unauthorized absences when the child has had three unauthorized absences within a 60-day timeframe.

(3) Unauthorized absence--A child is absent from the grounds of an operation without permission from a caregiver and cannot be located. This includes when an unauthorized person has removed the child from the operation.

§748.303. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:

Figure: 26 TAC §748.303(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §748.311 of this division (relating to How must I document a serious incident?).

(c) You must document an unauthorized absence that does not meet the reporting time requirements defined in subsection (a)(7) - (9) of this section within 24 hours after you become aware of the unauthorized absence. You must document the absence:

(1) In the same manner as for a serious incident, as described in §748.311 of this division; and

(2) Complete an addendum to the serious incident report to finalize the documentation requirements, if the child returns to an operation after 24 hours.

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement, as outlined in the chart above;

(2) The parents, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:
Figure: 26 TAC §748.303(e)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 6. UNAUTHORIZED ABSENCES

26 TAC §§748.451, 748.453, 748.455, 748.457, 748.459, 748.461, 748.463

STATUTORY AUTHORITY

The amendments and new section 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, and Human Resources Code (HRC), §42.042, which provides that the Executive Commissioner of HHSC shall adopt rules to carry out the provisions of HRC, Chapter 42.

§748.453. What documentation must be included in an annual summary log for a child who has an unauthorized absence?

(a) For each unauthorized absence during the relevant year, you must document the following information in an annual summary log:

(1) The name, age, gender, and date of admission of the child who was absent;

(2) The time and date the unauthorized absence was discovered;

(3) How long the child was gone or if the child did not return;

(4) The name of the caregiver responsible for the child at the time the child's absence was discovered;

(5) The intake report number, if a report was made to Licensing or the Department of Family and Protective Services; and

(6) Whether law enforcement was contacted, including the name of any law enforcement agency that was contacted and the number of the police report, if applicable.

(b) You must maintain each annual summary log for five years.

(c) You must make the annual summary logs available to Licensing for review and reproduction, upon request.

§748.455. What are the requirements for debriefing a child after an unauthorized absence?

(a) After a child returns to an operation from an unauthorized absence, the caregiver, or other appropriate person, must conduct a debriefing with the child as soon as possible, but no later than 24 hours after the child's return. The purpose of the debriefing is for the child and the caregiver, or other appropriate person, to discuss the following:

(1) The circumstances that led to the child's unauthorized absence;

(2) The trauma informed strategies the child can use to avoid future unauthorized absences and how the operation can support those strategies;

(3) The child's condition; and

(4) What occurred while the child was away from the operation, including where the child went, who was with the child, the child's activities, and any other information that may be relevant to the child's health and safety.

(b) The caregiver must allow the child to return to routine activities, excluding any activity that the caregiver determines would be inappropriate because of the child's condition following the unauthorized absence or something that occurred during the unauthorized absence.

(c) The debriefing must be documented in the child's record, including any routine activity that would be inappropriate for the child to return to and the explanation for why the activity is inappropriate.

§748.461. What must a triggered review of a child's unauthorized absences include?

A triggered review of a child's unauthorized absences must include the following:

(1) A review of the child's records documenting previous unauthorized absences, including previous debriefings;

(2) A review of service plan elements identified in §748.1337(b)(1)(D) and (H) and, as applicable, §748.1337(b)(2) and (3) of this chapter (relating to What must a child's initial service plan include?);

(3) An examination of trauma informed alternatives to minimize the unauthorized absences of the child; and

(4) A written plan to reduce the unauthorized absences of the child, which you must document in the child's record.

§748.463. What is an overall operation evaluation for unauthorized absences?

(a) Every six months, you must conduct an overall operation evaluation for unauthorized absences that have occurred at your operation during that time period.

(b) The objectives of the evaluation are to:

(1) Develop and maintain a trauma informed environment that supports positive and constructive behaviors by children in care; and

(2) Ensure the overall safety and well-being of children in care.

(c) The evaluation must include:

(1) The frequency and patterns of unauthorized absences of children in your operation; and

(2) Specific trauma informed strategies to reduce the number of unauthorized absences in your operation.

(d) You must maintain the results of each six-month overall operation evaluation for unauthorized absences for five years.

(e) You must make the results of each overall operation evaluation for unauthorized absences available to Licensing for review and reproduction, upon request.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES
SUBCHAPTER D. REPORTS AND RECORD KEEPING

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §749.501, new §749.501, amendments to §749.503 and §749.513, and new Division 5, Unauthorized Absences, consisting of new §§749.590 - 749.596.

Amendments to §749.503 and new §§749.591, 749.592, 749.595, and 749.596 are adopted with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8205). These rules will be republished.

The repeal of §749.501; new §§749.501, 749.590, 749.593, and 749.594; and amendments to §749.513 are adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8205). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal, amendments, and new sections address the issue of unauthorized absences of children in foster homes by requiring child-placing agencies (CPAs) to take additional actions when a child leaves a foster home without permission (unauthorized absence). Current rules require CPAs to document when a child is absent and cannot be located for a specified timeframe, depending on the age and development level of the child. The repeal, amendments, and new sections will include additional requirements for a CPA, such as: documenting each time a child has an unauthorized absence, regardless of the length of time the child is absent; maintaining an annual log of each unauthorized absence; debriefing the child after each unauthorized absence; conducting a triggered review for each child who has had three unauthorized absences within a 60-day timeframe, to examine alternatives and create a written plan to reduce the number of unauthorized absences; and conducting an evaluation, every six months, of the frequency and patterns of unauthorized absences from the CPA's foster homes.

COMMENTS

The 31-day comment period ended January 27, 2020. During this period, HHSC received comments regarding the proposed rules from five commenters, including Upbring, Texas Alliance for Child and Family Services, Disability Rights Texas, Texas Appleseed, and the Texas Department of Family and Protective Services (DFPS). Several of the commenters had multiple comments. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Four commenters generally supported the intent and purpose of the rule changes, which further trauma informed practices for tracking and caring for children who run away from residential care.

Response: HHSC appreciates the support of the rules.

Comment: Two commenters generally commented on the new review process. Both commenters recommended a more robust process, which would include an outside review of reoccurring unauthorized absences. One of the commenters specifically recommended a review by DFPS specialists; making the annual summary log available to outside experts, regardless of whether the Child Care Licensing Department of HHSC (Licensing) requested the log; requiring outside experts to participate in triggered reviews; requiring a triggered review after two unauthorized absences (the commenter did not note a timeframe for the triggered review to occur) instead of after three unauthorized absences within a 60-day timeframe; and reporting triggered reviews to Licensing. The second commenter recommended that a more robust process include outside reviews to determine whether there are any undetected issues, address unmet needs or hidden abuse or neglect, and determine how unauthorized absences affect the child's service plan.

Response: HHSC disagrees with the comments and declines to revise the rules, including not revising the proposed requirement of a triggered review after three unauthorized absences within 60 days. However, HHSC understands that the triggered review process will be new and may require revisions in the future. The commenters may not understand the respective roles of Licensing and DFPS. Because Licensing's role is regulatory, Licensing must create a process whereby a CPA is responsible for implementing actions that prevent future unauthorized absences, regardless of whether the children are in DFPS conservatorship. Additionally, Licensing does not regulate DFPS oversight of children in the role of a managing conservator. Regarding the comment that a DFPS specialist participate in the review, new §749.594 requires a CPA to notify the parent of a child, which is defined as "a person who has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian," at least two weeks before the triggered review. In addition to the triggered review described in these rules, DFPS has a process for a child in DFPS conservatorship where DFPS staff, the child, and other supports for the child meet. This meeting allows the child an opportunity to discuss how DFPS can support the child, so unauthorized absences do not continue to occur (sometimes called a Recovery Round Table). With respect to the possibility of outside reviews, a CPA cannot make an an-

nual summary log available to outside experts since the logs are confidential because they contain the names of multiple children. Regarding reporting triggered reviews to Licensing, the Licensing oversight of the process will occur through routine monitoring inspections and investigations and does not require the CPA to report each triggered review to Licensing. DFPS will have an opportunity to monitor what transpires during a triggered review when DFPS is invited to attend in its role as the managing conservator of children.

Comment: Regarding §749.503 generally, one commenter stated that the current reporting structure does not capture all relevant unauthorized absences, which could be instrumental in preventing future unauthorized absences. The commenter did not request any rule changes.

Response: It is true that CPAs do not currently report all unauthorized absences to Licensing, which is why HHSC proposed these rule changes. New §749.503(c), and other rule changes, will now require all CPAs to document any unauthorized absences that are not reported to Licensing, debrief the child after every unauthorized absence, have triggered reviews under certain circumstances, and have overall agency evaluations every six months.

Comment: Regarding §749.503(a)(6), one commenter stated that "being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained" should not be excluded from being reported to Licensing and the child's parent (the definition of a parent also includes the managing conservator of the child, which in many instance is DFPS), because DFPS, the CPA, and the foster parents are poised to help improve service plans for youth and need to be aware of any involvement with law enforcement.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 749. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §749.503(a)(8) and (9), three commenters stated the timeframes for reporting unauthorized absences of children 6 - 12 years old to law enforcement should be changed from two hours to immediately, and for children 13 years old and older should be changed from six hours to immediately, but no later than two hours after the child is not at the foster home. Two commenters want this absence reported even if the child is no longer missing.

Response: HHSC did not propose these paragraphs for change and declines to revise them at this time. However, Licensing will consider the comments during the current comprehensive review project for Chapter 749. This will ensure the public has the opportunity to comment on any proposed changes. Note: The timeframe for reporting unauthorized absences for children 13 years old and older was changed from 24 hours to six hours, in 2017.

Comment: Regarding §749.503(d)(1), one commenter stated that directing CPAs to report serious incidents of adult residents to law enforcement "as outlined in the chart above" is ambiguous because the chart discusses minors.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 749. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §749.503(d)(2), one commenter stated that directing CPAs to report serious incidents of adult residents to the parent is only correct if the parent is the legally authorized representative. If not, and the adult resident is incapable of making decisions about their own care, the case should be reported to the Probate Court, our other appropriate court, for resolution.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 749. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §749.503(e)(5), one commenter stated that §748.303(e)(5) and §749.503(e)(5) have slight variations in the wording, which causes the rule to be unclear and vague.

Response: HHSC agrees with the comment and is making the recommended revisions. Though HHSC did not propose this paragraph for change, the revisions are editorial and do not change the meaning of the rule.

Comment: Regarding §749.513(2), one commenter stated the documentation requirements for a short personal restraint that results in substantial physical injury should be consistent with the emergency behavior intervention documentation requirements in §749.2305.

Response: HHSC did not propose this paragraph for change and declines to revise it at this time. However, Licensing will consider the comment during the current comprehensive review project for Chapter 749. This will ensure the public has the opportunity to comment on any proposed change.

Comment: Regarding §749.591(a), one commenter wanted to know if HHSC will provide an outline or spreadsheet with the requirements of the annual summary log.

Response: HHSC will provide a sample form that includes the requirements for the annual summary log.

Comment: Regarding §749.591(a)(5), one commenter suggested adding the police report number to the annual summary log when law enforcement is contacted and adding an intake report number for unauthorized absences reported to Licensing or DFPS.

Response: HHSC agrees with the comment and revises the rule accordingly.

Comment: Regarding §749.592(a), one commenter wondered if a CPA could use a Recovery Round Table held by DFPS in place of the required debriefing of a child.

Response: No revision to the rule is required. Though a DFPS Recovery Round Table may be similar to the required debriefing, a CPA cannot use it in place of the debriefing, because the Recovery Round Table does not have to be completed immediately, the requirements of the round table are not identical to the requirements of a debriefing, and the round table is not regulated by Licensing.

Comment: Regarding §§749.592(a)(2), 749.595(3), and 749.596(b)(1) and (c)(2), one commenter stated the most effective services that a foster home or CPA provides are evidence-based, trauma informed supports that aim to address a child's behavioral symptoms prior to or during placement. The commenter stated that the strategies that a child can

use to avoid further unauthorized absences, and those used in triggered reviews and overall evaluations, should be evidence-based and trauma informed.

Response: HHSC agrees in part and disagrees in part with the comment. A CPA and foster home must already integrate trauma informed practices into the care, treatment, and management of each child (See §749.1309(a)). Accordingly, HHSC agrees that any strategies or alternatives used to prevent unauthorized absences, and the environment that supports positive and constructive behavior of children in care, must be trauma informed. HHSC revises the rules to make the requisite revisions regarding trauma informed care. However, determining whether these strategies or alternatives are evidence-based would be difficult, if not impossible to verify; therefore, HHSC declines to revise the rules to include the term "evidence-based."

Comment: Regarding §749.592(a)(4), one commenter suggested an addition to the rule stating that if a child discloses that abuse or neglect occurred during an unauthorized absence, then the foster parent or other person conducting the debriefing should end the debriefing and report the allegation to DFPS.

Response: HHSC appreciates the commenter's sensitivity to the DFPS responsibility for investigating allegations of abuse and neglect. Accordingly, HHSC will add a helpful information box to the Minimum Standards on the HHSC Provider webpage to clarify that if a child discloses that abuse or neglect may have occurred during an unauthorized absence, the foster parent, or other person conducting the debriefing, must make a report to DFPS and not ask additional questions regarding the abuse and neglect. However, the foster parent, or other person conducting the debriefing, must complete the remaining requirements of the debriefing.

Comment: Regarding §749.596, one commenter wanted to know if HHSC would provide a form for the six-month overall agency evaluation.

Response: HHSC will not provide a sample form, because an overall agency evaluation could be very different from one CPA to another.

Comment: One commenter stated that the fiscal impact did not include any impact regarding the provider's and the DFPS case worker's time involved in debriefings (§749.592) and triggered reviews (§749.594).

Response: HHSC disagrees with the comment. HHSC assumes that, as a best practice, all providers and DFPS caseworkers currently debrief a child after an unauthorized absence. During a workgroup meeting, this assumption was verified. The new rule (§749.592) does specify what a debriefing must consist of, but the rule does not contemplate that additional time will be required to complete the debriefing. HHSC costed out the child placement staff's time in the fiscal impact for triggered reviews (§749.594). The fiscal impact also indicated that for the 11 DFPS child-placing agencies, the DFPS foster and development (FAD) staff would be responsible for performing the new duties required under the new rules, and HHSC anticipates that the FAD staff time needs to perform these additional duties can be absorbed within existing resources. Finally, the participation of the DFPS caseworkers is not mandatory. However, as DFPS is currently focusing resources on issues with unauthorized absences, HHSC anticipates that any additional duties can be absorbed within existing resources.

Some minor editorial changes were made to §749.596(a), (c)(1), and (c)(2) to clarify that the discussion related to unauthorized absences from foster homes, and a cite was clarified at §749.503(e)(3).

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

26 TAC §749.501

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Human Resources Code (HRC), §42.042, which provides that the Executive Commissioner of HHSC shall adopt rules to carry out the provisions of HRC, Chapter 42.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray
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For further information, please call: (512) 438-5559

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26 TAC §§749.501, 749.503, 749.513

STATUTORY AUTHORITY

The new section and amendments 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, and Human Resources Code (HRC), §42.042, which provides that the Executive Commissioner of HHSC shall adopt rules to carry out the provisions of HRC, Chapter 42.

§749.503. When must I report and document a serious incident?

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified timeframes:
Figure: 26 TAC §749.503(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as for a serious incident, as described in §749.511 of this division (relating to How must I document a serious incident?).

(c) You must document an unauthorized absence that does not meet the reporting time requirements defined in subsection (a)(7) - (9) of this section within 24 hours after you become aware of the unauthorized absence. You must document the absence:

(1) In the same manner as for a serious incident, as described in §749.511 of this division; and

(2) Complete an addendum to the serious incident report to finalize the documentation requirements, if the child returns to a foster home after 24 hours.

(d) If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law enforcement as outlined in the chart above;

(2) The parents, if the adult resident is not capable of making decisions about the resident's own care; and

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(e) You must report and document the following types of serious incidents involving your agency, one of your foster homes, an employee, professional level service provider, contract staff, or a volunteer to the following entities within the specified timeframe:
Figure: 26 TAC §749.503(e)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 5. UNAUTHORIZED ABSENCES

26 TAC §§749.590 - 749.596

STATUTORY AUTHORITY

The new sections 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, and Human Resources Code (HRC), §42.042, which provides that the Executive Commissioner of HHSC shall adopt rules to carry out the provisions of HRC, Chapter 42.

§749.591. What documentation must be included in an annual summary log for a child who has an unauthorized absence?

(a) For each unauthorized absence during the relevant year, you must document the following information in an annual summary log:

(1) The name, age, gender, and date of admission of the child who was absent;

(2) The time and date the unauthorized absence was discovered;

(3) How long the child was gone or if the child did not return;

(4) The name of the caregiver responsible for the child at the time the child's absence was discovered;

(5) The intake report number, if a report was made to Licensing or the Department of Family and Protective Services; and

(6) Whether law enforcement was contacted, including the name of any law enforcement agency that was contacted and the number of the police report, if applicable.

(b) You must maintain each annual summary log for five years.

(c) You must make the annual summary logs available to Licensing for review and reproduction, upon request.

§749.592. What are the requirements for debriefing a child after an unauthorized absence?

(a) After a child returns to the foster home from an unauthorized absence, the foster parent, or other appropriate person, must conduct a debriefing with the child as soon as possible, but no later than 24 hours after the child's return. The purpose of the debriefing is for the child and the foster parent, or other appropriate person, to discuss the following:

(1) The circumstances that led to the child's unauthorized absence;

(2) The trauma informed strategies the child can use to avoid future unauthorized absences and how the foster parent can support those strategies;

(3) The child's condition; and

(4) What occurred while the child was away from the foster home, including where the child went, who was with the child, the child's activities, and any other information that may be relevant to the child's health and safety.

(b) The foster parent must allow the child to return to routine activities, excluding any activity that the foster parent determines would be inappropriate because of the child's condition following the unauthorized absence or something that occurred during the unauthorized absence.

(c) The debriefing must be documented in the child's record, including any routine activity that would be inappropriate for the child to return to and the explanation for why the activity is inappropriate.

§749.595. What must a triggered review of a child's unauthorized absences include?

A triggered review for a child's unauthorized absences must include the following:

(1) A review of the child's records documenting previous unauthorized absences, including previous debriefings;

(2) A review of service plan elements identified in §749.1309(b)(1)(D) and (H) and, as applicable, §749.1309(b)(2) and (3) of this chapter (relating to What must a child's initial service plan include?);

(3) An examination of trauma informed alternatives to minimize the unauthorized absences of the child; and

(4) A written plan to reduce the unauthorized absences of the child, which you must document in the child's record.

§749.596. What is an overall agency evaluation for unauthorized absences?

(a) Every six months, you must conduct an overall agency evaluation for unauthorized absences that have occurred at your foster homes during that time period.

(b) The objectives of the evaluation are to:

(1) Develop and maintain a trauma informed environment that supports positive and constructive behaviors by children in care; and

(2) Ensure the overall safety and well-being of children in care.

(c) The evaluation must include:

(1) The frequency and patterns of unauthorized absences of children from your foster homes; and

(2) Specific trauma informed strategies to reduce the number of unauthorized absences from your foster homes.

(d) You must maintain the results of each six-month overall agency evaluation for unauthorized absences for five years.

(e) You must make the results of each overall agency evaluation for unauthorized absences available to Licensing for review and reproduction, upon request.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER E. STATEWIDE PROCUREMENT DIVISION SERVICES - TRAVEL AND VEHICLES

34 TAC §20.407, §20.408

The Comptroller of Public Accounts adopts amendments to §20.407, concerning definitions and §20.408, concerning exceptions to the use of contract travel services, with changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1193). The rules will be republished.

The comptroller also adopts the change to the title of Subchapter E Special Categories of Contracting, Division 2, which changes the title from State Support Services - Travel and Vehicles to Statewide Procurement Division Services - Travel and Vehicles.

The amendments are adopted to clarify documentation requirements for state employees' use of travel services other than contract travel services.

The amendments to §20.407 add a definition of "overall cost of travel" that includes a number of elements that contribute to costs of employee travel.

The amendments to §20.408 clarify, in subsection (a), that state agencies may reimburse their employees for travel services other than contract travel services only if one or more specified exceptions apply; clarify, in subsection (b), the exception for lower overall cost of travel, which requires documentation and must be based on a consistent cost comparison methodology; clarify, in subsection (h), the scope of the emergency response exception; and require, in new subsection (j), documentation of necessity whenever an agency reimburses lodging costs at a rate that exceeds the maximum set in the regulations issued by the United States General Services Administration (GSA) for a particular location, mirroring the requirement in General Appropriations Act (House Bill 1, 2019), Article IX, §5.05(a)(2). The title of §20.408 is amended to indicate that this section addresses requirements for higher cost of travel.

The comptroller received comments from Tess Ludes-Meyers, on behalf of Texas Department of Transportation, asking if travelers reducing their meals to increase the maximum lodging reimbursement would need to document the exception described in subsection (j). The comptroller has added clarifying language in subsection (j) to state that an employee claiming less than the maximum meal allowance may apply the reduced amount to increase the maximum lodging reimbursement rate without triggering the requirement to document described in subsection (j); this aligns with the Textravel policy administered by the comptroller's Fiscal Management Division.

The comptroller also received comments from Shelley Knight, on behalf of the Texas Commission on Law Enforcement, who noted that her comments primarily related to the comptroller's 971-M1 statewide contract for Lodging Services and Booking Tool, with some also applying to other statewide travel contracts. Ms. Knight commented that pricing changed at times on the statewide lodging contract and depending when booked may not always be the lowest cost. Ms. Ludes-Meyers also asked for exception (b), what contract travel services pricing should be used since lodging and rental vehicle pricing is available from multiple providers at different rates. The rule provides for the agency to develop its own cost comparison methodology for considering an exception on lower cost, however, price at the time of booking could be a suitable point to document comparison pricing. The comptroller's rental car contract pricing and lodging contract pricing at or below the GSA rates is established for state travelers to obtain suitable travel in an efficient manner without an exception being required.

Ms. Knight also noted that for agencies with no central reservations staff, employees are entrusted to their own discretion making travel arrangements individually or in coordination with others, and prior oversight would be cost prohibitive, therefore review occurs after the travel has occurred. The comptroller's statewide contracts are developed to provide flexibility and services for the diverse agencies that comprise Texas state government; the review of travel receipts and documents after travel, as well as booking by individual travelers is common, though not uniform, across state agencies. Specifically for lodging, individual travelers may book up to eight rooms concurrently to establish uniform pricing and efficient coordination of travel arrangements. If travelers wish for explanation or training in application of state travel rules, the comptroller's State Travel Management Program and Fiscal Management Expenditure Assis-

tance staffs are available to answer questions and provide training. Ms. Knight additionally commented on specific savings and practices employed by her agency's travelers to conserve state funds.

Ms. Knight's final comments noted that no other purchasing statute or rule instructs agencies to do a "cost comparison" before the expenditure is completed, and that allowing for shifting expenses in the cost comparison is too variable to predict. The comptroller notes that the "cost comparison" is required only when considering an exception to using a state contract; no cost comparison is required when booking a room directly off the contract that is at GSA rate or lower. The rule, current and proposed, allows travel obtained at lower overall cost to the state, and *encourages* state agencies to obtain lower priced travel that lowers the overall cost. By incorporating a definition of the concept of "lower overall cost of travel," agencies and their travelers may now consider the factors that contribute to that overall cost when determining if travel is efficiently secured by means other than the statewide travel contracts. The comptroller does not stipulate *lowest cost* of travel, or only the least expensive hotels, rental cars, flights or other travel options would ever be used, but allows agencies to consider non-cost exceptions for health and safety, proximity to duty station, travel time or other factors in selecting travel arrangements.

The comptroller also received comments from Linda Flores, on behalf of Texas Department of Motor Vehicles, noting that the rules better define the concept of "lower overall cost of travel"; that the General Appropriations Act already requires documentation for lodging reimbursement that exceeds the maximum GSA rate; that her agency has not utilized the exceptions for emergency response; and that because her agency's travel policy references §20.408 for valid exceptions, it is always current. Ms. Flores noted that the rule changes she addressed would have no impact on her agency.

The comptroller has responded to all who submitted comments within the 30-day comment period.

Following publication, the comptroller noted two errors in the proposed text, which the comptroller has now corrected. The comptroller has capitalized the word "God" in §20.407(3). The comptroller has capitalized the name of the "General Services Administration" in the title of §20.408(j).

The amendments are adopted under Government Code, §§403.011, which outlines the general powers of the comptroller, 572.051, which requires each state agency to adopt a written ethics policy, and 660.021, which authorizes the comptroller to adopt rules to efficiently and effectively administer this chapter related to state employee travel costs.

These amendments affect Government Code, §660.07.

§20.407. Definitions.

The following words and terms used in this division are defined as follows unless the context clearly indicates otherwise.

(1) Contractor--An individual or entity under contract with comptroller for the provision of travel services.

(2) Contract travel services--The travel services provided pursuant to comptroller contracts that guarantee prices and levels of services for all eligible entities and individuals.

(3) Force majeure event--Any acts of God, war, riot, strike, or other event beyond the control of a contractor and that could not reasonably have been anticipated or avoided and which, by the exercise of all reasonable due diligence, such contractor is unable to overcome.

(4) Official government business--Business required in the scope and course of the traveler's employment that is properly authorized by the employing governmental entity.

(5) Overall cost of travel--May include the actual costs to the state for travel, including flight or other mode of transport to the duty station, mileage, rental car, taxi, parking, tolls, lodging, meals in amounts less than or equal to the allowed per diem, and in some instances may also include travel time to duty station or other relevant factors directly related to the travel that are significant in the context of the overall cost of the travel event.

(6) State agency--Any department, commission, board, office, council, or other agency in the executive branch of state government created by the constitution or by statute that is required to use contract travel services pursuant to Government Code, §2171.055.

(7) State employee--Any person employed by a state agency, or an elected or appointed official.

(8) State travel credit card--A credit card issued to an individual or a governmental entity by a contract travel credit card contractor.

(9) State travel directory--A comptroller publication that lists current available contract travel services.

(10) Traveler--Any person eligible to use contract travel services, including those eligible pursuant to the comptroller's travel allowance guide.

§20.408. Exceptions to the Use of Contract Travel Services and Higher Cost of Travel.

(a) Exceptions to use of contract travel services. In accordance with these rules and applicable statutes, state agencies may allow their employees to use travel services other than contract travel services only if one or more of the exceptions in subsections (b) through (i) of this section apply. Nothing in this section affects or alters the authority of the comptroller regarding travel reimbursement or audit of travel transactions.

(b) Lower overall cost of travel. The state agency obtains lower priced travel services through the use of fourteen day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel. When a state agency uses any travel services obtained at a lower overall cost than the contract travel services price, the exception must be documented by the agency. The agency should document and follow a consistent cost comparison methodology.

(c) Unavailability of contract travel services. The contract travel services are not available during the time or at the location necessary for the business purpose; or the contract travel service does not provide for the service required; or because the contractor is unable to provide the contract services due to a force majeure event.

(d) Special needs. The traveler's health, safety, physical condition, or disability requires accommodations, including medical emergency or other necessary services, not available from contract travel service contractors.

(e) Custodians of persons. The traveler has custody of a person pursuant to statute or court order and the traveler is required to provide a degree of security and safety that is not available from contract travel service contractors.

(f) In travel status. The traveler is in the course of travel and changes in scheduling render the use of contract travel services imprac-

tical or the appropriate travel services are not available. The traveler shall make reasonable efforts to secure rates equal to or lower than the contract travel service rates.

(g) Group program. The traveler is using a group program wherein reservations were made through a required source to obtain a particular rate or service.

(h) Emergency response. The traveler is responding to a public health or safety emergency situation and the use of contract travel services is not available or would result in an unacceptable delay.

(i) Legally required attendance. The traveler is required by a court, administrative tribunal, or other entity to appear at a particular time and place without sufficient notice to obtain contract travel services.

(j) Lodging reimbursement exceeding General Services Administration rates. Except when a state employee may claim less than the maximum meal reimbursement rate for a duty point and use the amount of the reduction to increase the maximum lodging reimbursement rate for the duty point, if a state agency reimburses lodging at a rate exceeding the maximum set in the regulations issued by the United States General Services Administration for a particular location, the agency must document its determination that local conditions necessitate the higher rate for that location.

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 April 30, 2020.

TRD-202001714
Don Neal
Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts
Effective date: May 20, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-0387


Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections in 28 Texas Administrative Code (TAC):

--Chapter 126 (General Provisions Applicable to All Benefits);

--Chapter 127 (Designated Doctor Procedures and Requirements); and

--Chapter 128 (Benefits--Calculation of Average Weekly Wage).

This review complies with the requirements for periodic rule review under Texas Government Code §2001.039.

DWC will consider whether these rules still have reason to exist or should be repealed, readopted, or readopted with amendments.

Comments

To comment on this rule review project, submit your written comments by 5:00 p.m., Central time, on June 8, 2020.

Each comment should:

--clearly specify the rule it applies to; and

--include proposed alternative language as appropriate.

Indicate if your comment is a general comment.

Email your written comments or hearing request to RuleComments@tdi.texas.gov, or mail or deliver them 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

In future rulemaking, we may consider any suggested repeals or amendments identified during this rule review under the Administrative Procedures Act, Texas Government Code Chapter 2001.

TRD-202001717

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: April 30, 2020

♦ ♦ ♦

Adopted Rule Reviews

Texas Board of Occupational Therapy Examiners

Title 40, Part 12

The Texas Board of Occupational Therapy Examiners adopts the review of the rules in the following chapters of Title 40 Texas Administrative Code in accordance with Texas Government Code §2001.039: Chapter 361, Statutory Authority; Chapter 362, Definitions; Chapter 363, Consumer/Licensee Information; Chapter 364, Requirements for Licensure; §367.1, Continuing Education; §367.2, Categories of Education; §367.3, Continuing Education Audit; Chapter 368, Open Records; Chapter 369, Display of Licenses; Chapter 370, License Renewal; Chapter 371, Inactive and Retired Status; Chapter 372, Provision of Services; Chapter 373, Supervision; Chapter 374, Disciplinary Actions/Detrimental Practice/Complaint Process/Code of Ethics/Licensure of Persons with Criminal Convictions; and Chapter 375, Fees. The notice of intent to review these rules was published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 2055).

No comments were received on the proposed rule review. However, Board rule §367.4, Process for Selecting a Peer Organization to Evaluate and Approve Continuing Education Courses, has been identified by the Regulatory Compliance Division of the Office of the Governor as possibly having an anticompetitive market effect and may not be readopted until the Board obtains the approval of the Regulatory Compliance Division after the completion of the division's review of the section. If the Board obtains this approval to readopt the rule, notice of the proposed readoption of the review of §367.4 will be submitted to the *Texas Register* for publication in a future issue. For this reason, §367.4 has not been included in this notice of adoption.

The Board has assessed whether the reasons for adopting the rules continue to exist. As a result of the review, the Board finds the reasons for adopting the rules continue to exist and readopts the rules in accordance with the requirements of Texas Government Code §2001.039.

TRD-202001787

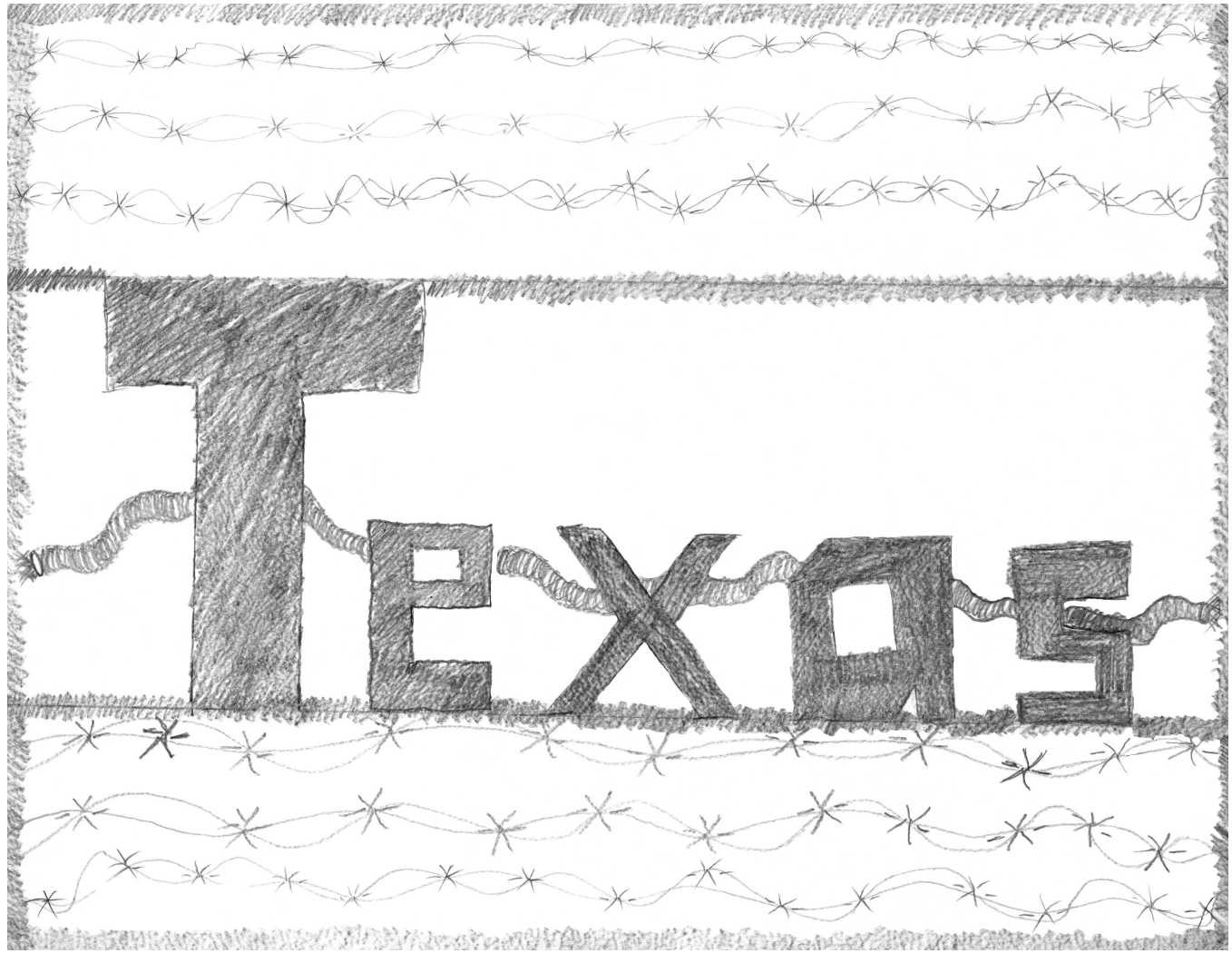
Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Filed: May 5, 2020

♦ ♦ ♦


TEXAS

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: 4 TAC §4.2

Schedule of Violations

Source Law	Violation	Type of Violation	Penalty	Enhancement
§§ 153.046(5), 153.047(5), 153.048(b)(4), and 153.082 of the Texas Natural Resources Code and 4. T.A.C. §227.1	Failure to maintain insurance. (Initial Violation) This violation includes the following conduct: -- misrepresenting the status of insurance, for example, not correctly reporting a policy change or modification on the annual insurance verification form -- failure to verify insurance annually -- allowing insurance to lapse	Administrative	Initial violation: $1,000 fine.	1. Initial violation with harm to the public or third parties: $1,000 to $2,500. 2. If a Certified and Insured Prescribed Burn Manager ("CIPBM") engages in false or misleading conduct when reporting or verifying insurance to the department, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in Section 153.102 of the Texas Natural Resources Code.
§§ 153.046(5), 153.047(5), 153.048(b)(4), and 153.082 of the Texas Natural Resources Code and 4. T.A.C. §227.1	Failure to maintain insurance. (Second Violation) This violation includes the following conduct: -- misrepresenting the status of insurance, for example, not correctly reporting a policy change or modification on the annual insurance verification form -- failure to verify insurance annually -- allowing insurance to lapse	Administrative	Second violation within three years: $2,000 fine.	1. Second violation with harm to the public or third parties: fine of $2,500 to $3,000. 2. If a CIPBM engages in false or misleading conduct when reporting or verifying insurance to the department, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in Section 153.102 of the Texas Natural Resources Code.
§§ 153.046(5), 153.047(5), 153.048(b)(4), and 153.082 of the Texas Natural Resources Code and 4. T.A.C. §227.1	Failure to maintain insurance. (Third Violation) This violation includes the following conduct: -- misrepresenting the status of insurance, for	Administrative	Third violation within three years: $3,000 fine.	1. Third violation with harm to the public or third parties: fine of $3,000 to $5,000. 2. If a CIPBM engages in false or misleading conduct when reporting or verifying insurance to the department, the department may impose

	example, not correctly reporting a policy change or modification on the annual insurance verification form -- failure to verify insurance annually -- allowing insurance to lapse			enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in Section 153.102 of the Texas Natural Resources Code.
§§ 153.046(5), 153.047(5), 153.048(b)(4), and 153.082 of the Texas Natural Resources Code and 4. T.A.C. §228.2(a)(2)(A)	Failure to provide proof of current insurance coverage to the landowner or landowner's agent prior to conducting a burn. (Initial violation)	Administrative	Initial violation: $250 fine.	1. Initial violation with harm to the public or third parties: $300 to $500. 2. If a CIPBM engages in false or misleading conduct when providing proof of coverage to a landowner or landowner's agent, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in Section 153.102 of the Texas Natural Resources Code.

§153.082 of the Texas Natural Resources Code and 4. T.A.C. §228.2(a)(2)(A)	Failure to provide proof of current insurance coverage to the landowner or landowner's agent prior to conducting a burn. (Second violation)	Administrative	Second violation within three years: $500 fine.	1. Second violation with harm to the public or third parties: fine of $600 to $1,000. 2. If a CIPBM engages in false or misleading conduct when providing proof of coverage to a landowner or landowner's agent, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the

				factors set forth in Section 153.102 of the Texas Natural Resources Code.
§153.082 of the Texas Natural Resources Code and 4. T.A.C. §228.2(a)(2)(A)	Failure to provide proof of current insurance coverage to the landowner or landowner's agent prior to conducting a burn. (Third violation)	Administrative	Third violation within three years: $1,000 fine.	1. Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $1,250 to $5,000 2. If a CIPBM engages in false or misleading conduct when providing proof of coverage to a landowner or landowner's agent, the department may impose enhanced administrative penalty(ies), up to and including the maximum fine of $5,000, temporary suspension of certification, and/or permanent revocation of certification, based on the factors set forth in Section 153.102 of the Texas Natural Resources Code.

4. T.A.C. §228.2(a)(2)	Failure to provide a copy of the certified and insured prescribed burn manager certificate to the landowner or landowner's agent prior to conducting a burn. (Initial violation)	Administrative	Initial violation: $250 fine.	Initial violation with harm to the public or third parties: $300 to $500.
4. T.A.C. §228.2(a)(2)	Failure to provide a copy of the certified and insured prescribed burn manager certificate to the landowner or landowner's agent prior to conducting a burn. (Second violation)	Administrative	Second violation within three years: $500 fine.	Second violation with harm to the public or third parties: fine of $2,500 to $3,000.
4. T.A.C. §228.2(a)(2)	Failure to provide a copy of the certified	Administrative	Third violation within three	Third violation with harm to the public or third parties:

	and insured prescribed burn manager certificate to the landowner or landowner's agent prior to conducting a burn. (Third violation)		years: $1,000 fine.	Permanent revocation of certification with a fine of $1,250 to $5,000.
4 T.A.C. §227.3	Failure to obtain required CFTs or maintain documentation of CFTs. (Initial Violation)	Administrative	Initial violation: $250.00 fine.	Initial violation with harm to the public or third parties: fine of $500.
4 T.A.C. §227.3	Failure to obtain required CFTs or maintain documentation of CFTs. (Second Violation)	Administrative	Second violation within three years: $500 fine.	Second violation with harm to the public or third parties: fine of $600 to $1,000.

4 T.A.C. §227.3	Failure to obtain required CFTs or maintain documentation of CFTs. (Third Violation)	Administrative	Third violation within three years: $1,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $1,250 to $5,000.
4 T.A.C. §§ 229.4(b)(1)	Failure by CFT sponsor to provide activity roster within 14 days after the end of a CFT activity. (Initial Violation)	Administrative	Initial violation: 15 day suspension from administering , presenting, or instructing at CFT activities.	Not applicable.
4 T.A.C. §§ 229.4(b)(1)	Failure by CFT sponsor to provide activity roster within 14 days after the end of a CFT activity. (Second Violation)	Administrative	Second violation within three years: 30 day suspension from administering, presenting,or instructing at CFT activities.	Not applicable

4 T.A.C. § 229.4(c)	Multiple violations of Rule 229.4 by a CFT sponsor.	Administrative	Multiple violations: The department will refer the CFT sponsor to the Board, for consideration of a temporary suspension or permanent revocation of the CFT sponsor from further CFT activities.	In determining the recommended length of temporary suspension of a CFT sponsor, or whether to revoke a CFT sponsor, the department will consider those factors set forth in Section 153.102 of the Texas Natural Resources Code.

4 T.A.C. §227.4(d)	Failure to keep insurance records. Insurance records shall be kept for the longer of five years from the date of the original issuance of the insurance policy, or for so long as any complaint or litigation is pending against the CIPBM (Initial Violation)	Record Keeping	Initial violation: $250.00 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to keep insurance records. Insurance records shall be kept for the longer of five years from the date of the original issuance of the insurance policy, or for so long as any complaint or litigation is pending against the certified and insured prescribed burn manager CIPBM(Second Violation)	Record Keeping	Second violation within three years: $500 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to keep insurance records.	Record Keeping	Third violation within three	Not applicable.

	Insurance records shall be kept for the longer of five years from the date of the original issuance of the insurance policy, or for so long as any complaint or litigation is pending against the CIPBM(Third Violation)		years: $1,000 fine.	

4 T.A.C. § 227.4(d)	Failure to keep CFT records and have them available for inspection. CFT records shall be kept for a minimum of 5 years from the date the CFT was earned. (Initial Violation)	Record Keeping	Initial violation: $250.00 fine	Not applicable.
4 T.A.C. § 227.4(d)	Failure to keep CFT records and have them available for inspection. CFT records shall be kept for a minimum of 5 years from the date the CFT was earned. (Second Violation)	Record Keeping	Second violation within three years: $400 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to keep CFT records and have them available for inspection. CFT records shall be kept for a minimum of 5 years from the date the CFT was earned . (Third Violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to keep training and experience records and have them available for inspection. Such records shall be kept for a minimum of 5	Record Keeping	Initial violation: $250.00 fine.	Not applicable.

	years from the date of the indicated training and/or experience. (Initial Violation)			

4 T.A.C. § 227.4(d)	Failure to keep training and experience records and have them available for inspection. Such records shall be kept for a minimum of 5 years from the date of the indicated training and/or experience. (Second Violation)	Record Keeping	Second violation within three years: $400 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to keep training and experience records and have them available for inspection. Such records shall be kept for a minimum of 5 years from the date of the indicated training and/or experience. (Third Violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to have available or keep a Prescribed Burn File for a minimum of 5 years from the date of a prescribed burn. (Initial Violation)	Record Keeping	Initial violation: $250.00 fine.	Not applicable.
4 T.A.C. § 227.4(d)	Failure to have available or keep a Prescribed Burn File for a minimum of 5 years from the date of a prescribed burn. (Second Violation)	Record Keeping	Second violation within three years: $500 fine.	Not applicable.

4 T.A.C. § 227.4(d)	Failure to have available or keep a Prescribed Burn File for a minimum of 5 years from the date of a prescribed burn. (Third Violation)	Record Keeping	Third violation within three years: $1,000 fine.	Not applicable
§153.047(2) of the Natural Resources Code; 4 T.A.C. § 228.3(a)	Failure to have an insuredCIPBMpresent at all times while a prescribed burn is in progress. (Initial Violation)	Statutory or Rule	Initial violation: One year suspension and $1,000 fine.	Initial violation with harm to the public or third parties: 13 month to 24 month suspension; fine of $1,100 to $5,000.
§153.047(2) of the Natural Resources Code; 4 T.A.C. § 228.3(a)	Failure to have an insured CIPBM present at all times while a prescribed burn is in progress. (Second Violation)	Statutory or Rule	Second violation within three years: Permanent revocation of certification and a $2,000 fine.	Second violation with harm: Permanent revocation of certification and fine of $2,100 to $5,000.
§153.047(3)(A) of the Natural Resources Code; 4 T.A.C. §§ 228.1(a) & 228.1(b)	Failure to follow a written prescribed burn plan while conducting a prescribed burn. (Initial Violation)	Statutory or Rule	Initial violation: $1,000.00 fine.	Punishment may be enhanced for reckless or intentional conduct that results in substantial harm to a third party or the public, pursuant to the factors set forth in Section 153.102 of the Texas Natural Resources Code.
§153.047(3)(A) of the Natural Resources Code; 4 T.A.C. § 228.1(a) & 228.1(b)	Failure to follow a written prescribed burn plan while conducting a prescribed burn. (Second Violation)	Statutory or Rule	Second violation within three years: 15 to180 day suspension with $2,000 fine.	Punishment may be enhanced for reckless or intentional conduct that results in substantial harm to a third party or the public, pursuant to the factors set forth in Section 153.102 of the Texas Natural Resources Code.
§153.047(3)(A) of the Natural Resources Code; 4 T.A.C. § 228.1(a) & 228.1(b)	Failure to follow awritten prescribed burn plan while conducting a prescribed burn. (Third Violation)	Statutory or Rule	Third violation within three years: Permanent revocation of certification with $3,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with a fine of $3,100 to $5,000.

§153.047(3) of the Natural Resources Code; 4 T.A.C. § 228.1(a)	Conducting a prescribed burn without a written prescribed burn plan. (Initial Violation)	Statutory or Rule	Initial violation: Permanent revocation of certification with a $5,000 fine.	Not applicable.

4 T.A.C. §228.4	Failure to establish and adhere to a written Burn/Do Not Burn checklist during a county burn ban. (Initial Violation)	Statutory or Rule	Initial violation: $1,000 fine.	Initial violation with harm to the public or third parties: 15 to 180 day suspension with fine of $1,000 to $2,500.
4 T.A.C. §228.4	Failure to establish and adhere to a written Burn/Do Not Burn checklist during a county burn ban. (Second Violation)	Statutory or Rule	Second violation within three years: 15 to180 day suspension with $2,000 fine.	Second violation with harm to the public or third parties: Suspension of license from 60 days to 18 months; fine of $2,100 to $3,000.
4 T.A.C. §228.4	Failure to establish and adhere to a written Burn/Do Not Burn checklist during a county burn ban. (Third Violation)	Statutory or Rule	Third violation within three years: Permanent revocation of certification with $3,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with fine of $3,100 to $5,000.
§153.047(4) of the Natural Resources Code; 4 T.A.C. §228.2(a)(1)	Failure to provide written notification to residents, occupants or operators of structures containing sensitive receptors (residences, greenhouses, stables, etc.) that are within 300 feet of and in the general direction downwind from the prescribed burn. (Initial Violation)	Statutory or Rule	Initial violation: $1,000.00 fine.	Initial violation with harm to the public or third parties: 15 to 180 day suspension with fine of $1,200 to $2,500.

§153.047(4) of the Natural Resources Code; 4 T.A.C. 227.4(b)(1)(B) §228.2(a)(1)	Failure to provide written notification to residents, owners, occupants or operators of structures containing sensitive receptors (residences, greenhouses, stables, etc.) that are within 300 feet of and in the	Statutory or Rule	Second violation within three years: 15 to180 day suspension with $2,000 fine.	Second violation with harm to the public or third parties: Suspension of license from 60 days to 18 months; fine of $2,100 to $3,000.

	general direction downwind from the prescribed burn. (Second Violation)			
§153.047(4) of the Natural Resources Code; 4 T.A.C. §228.2(a)(1)	Failure to provide written notification to residents, owners, occupants or operators of structures containing sensitive receptors (residences, greenhouses, stables, etc.) that are within 300 feet of and in the general direction downwind from the prescribed burn (Third Violation)	Statutory or Rule	Third violation within three years: Permanent revocation of certification with $3,000 fine.	Third violation with harm to the public or third parties: Permanent revocation of certification with fine of $3,100 to $5,000.

§ 153.104 of the Natural Resources Code	Upon reasonable determination by the department, a CIPBM is engaged in or about to engage in conduct in violation of Chapter 153 of the Natural Resources Code which constitutes an immediate threat to public welfare.	Statutory or Rule	Emergency temporary suspension.	Punishment may be enhanced for reckless or intentional conduct that results in substantial harm to a third party or the public.
Chapter 153 of the Texas Natural Resources Code; 4 T.A.C. Chapters 225, 226, 227, 228, 229, and 230	Multiple violations by a CIPBM of Chapter 153 of the Natural Resources Code; multiple violations of administrative rules pertaining to obtaining, maintaining or keeping insurance; multiple violations of administrative rules pertaining to obtaining or	Statutory or Rule	For four or more violations of statute or rules that regulate prescribed burning activities in Texas, the department may assess the following penalties: $1,500 to $5,000 fine; suspension of 15 days to 20 months; and/or	In determining the sanction(s) for four or more violations of any single statute or rule, or four or more violations of multiple statutes or rules, the department will consider those factors set forth in Section 153.102 of the Texas Natural Resources Code.

	reporting CEUs; multiple violations of record keeping rules; multiple violations of 4 T.A.C. Chapters 225, 226, 227, 228, 229, and 230; and/or any combination of the above.		permanent revocation of certification.	

Texas Commission on Environmental Quality (TCEQ) Rules, *Outdoor Burning in Texas,*, General Requirements for Burning	Violation of TCEQ Rules	TCEQ rules	The department will refer known or suspected violations of TCEQ rules or guidelines to TCEQ for enforcement.	Not applicable.
Section 153.103 of the Natural Resources Code	If a person represents to the public that he or she is a CIPBM, but is not a CIPBM, the department may apply to a district court in any county for an injunction restraining such person from representing that he or she is a CIPBM.	Statute	Section 153.103 of the Natural Resources Code gives the department authority to apply for an injunction from a district court in any county to restrain a person who is not a CIPBM from representing that the person is a CIPBM.	Not applicable.

Figure 1: 19 TAC Chapter 230 – Preamble

The adopted amendment to §230.21(e) amends Figure: 19 TAC §230.21(e) to provide for a transition from the current content tests to the anticipated content pedagogy tests as follows:

Certificate Name	Current Test to Anticipated Content Test
§239.84, Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES to 253 Educational Diagnostician EC-12
§239.20, School Counselor: Early Childhood-Grade 12	152 School Counselor EC-12 TExES to 252 School Counselor EC-12 TExES
§233.14, Trade and Industrial Education: Grades 6-12	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES to 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES

Figure 2: 19 TAC Chapter 230 – Preamble

The SBEC took action at its February 20, 2020 meeting to revert the proposed amendment to §230.21(e) to allow staff more time to work through transition dates. The proposed amendment would have amended Figure: 19 TAC §230.21(e) to provide for a transition from the current content tests to the anticipated content pedagogy tests as follows:

Certificate Name	Current Test to Anticipated Content Test
§233.12, Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES to 258 Physical Education EC-12 TExES
§233.3, English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES to 217 English Language Arts and Reading 4-8 TExES
§233.2, Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES to 391 Core Subjects EC-6 TExES

Figure: 19 TAC §230.21(e)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Art			
§233.10	Art: Early Childhood-Grade 12	178 Art EC-12 Texas Examinations of Educator Standards (TExES)	160 Pedagogy and Professional Responsibilities (PPR) EC-12 TExES or 2015 edTPA: Visual Arts (pilot exam)
Bilingual Education			
§233.6	Bilingual Education Supplemental: Spanish	164 Bilingual Education Supplemental TExES **and** 190 Bilingual Target Language Proficiency (BTLPT) – Spanish TExES	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: American Sign Language	164 Bilingual Education Supplemental TExES **and** 184 American Sign Language (ASL) EC-12 TExES **and** 073 Texas Assessment of Sign Communications-American Sign Language (TASC-ASL)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Arabic	164 Bilingual Education Supplemental TExES **and** American Council for the Teaching of Foreign Languages (ACTFL) 614 Oral Proficiency Interview (OPI) – Arabic **and** 615 Writing Proficiency Test (WPT) – Arabic	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Chinese	164 Bilingual Education Supplemental TExES **and** ACTFL 618 OPI – Chinese (Mandarin) **and** 619 WPT – Chinese (Mandarin)	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Bilingual Education (continued)			
§233.6	Bilingual Education Supplemental: Japanese	164 Bilingual Education Supplemental TExES **and** ACTFL 616 OPI – Japanese **and** 617 WPT – Japanese	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Vietnamese	164 Bilingual Education Supplemental TExES **and** ACTFL 620 OPI – Vietnamese **and** 621 WPT – Vietnamese	Not Applicable: Not a Stand-alone Certificate
Career and Technical Education			
§233.13	Technology Education: Grades 6-12	171 Technology Education 6-12 TExES	160 PPR EC-12 TExES or 2143 edTPA: Technology and Engineering Education (pilot exam)
§233.13	Family and Consumer Sciences, Composite: Grades 6-12	American Association of Family and Consumer Sciences (AAFCS) 200 Family and Consumer Sciences – Composite Examination	160 PPR EC-12 TExES or 2117 edTPA: Family and Consumer Sciences (pilot exam)
§233.13	Human Development and Family Studies: Grades 8-12	AAFCS 202 Human Development and Family Studies Concentration Examination	160 PPR EC-12 TExES or 2117 edTPA: Family and Consumer Sciences (pilot exam)
§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8-12	AAFCS 201 Hospitality, Nutrition, and Food Science Concentration Examination	160 PPR EC-12 TExES or 2117 edTPA: Family and Consumer Sciences (pilot exam)
§233.13	Agriculture, Food, and Natural Resources: Grades 6-12	272 Agriculture, Food, and Natural Resources 6-12 TExES	160 PPR EC-12 TExES or 2100 edTPA: Agricultural Education (pilot exam)
§233.13	Business and Finance: Grades 6-12	276 Business and Finance 6-12 TExES	160 PPR EC-12 TExES or 2102 edTPA: Business Education (pilot exam)
§233.14	Marketing: Grades 6-12	275 Marketing 6-12 TExES	160 PPR EC-12 TExES or 2102 edTPA: Business Education (pilot exam)
§233.14	Health Science: Grades 6-12	273 Health Science 6-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Career and Technical Education (continued)			
§233.14	Trade and Industrial Education: Grades 6-12	Not Applicable	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (last operational date 8/31/2021) Starting 9/1/2021 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES
§233.14	Trade and Industrial Workforce Training: Grades 6-12	Not Applicable	370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8-12	241 Computer Science 8-12 TExES	160 PPR EC-12 TExES or 2143 edTPA: Technology and Engineering Education (pilot exam)
§233.5	Technology Applications: Early Childhood-Grade 12	242 Technology Applications EC-12 TExES	160 PPR EC-12 TExES or 2108 edTPA: Educational Technology Specialist (pilot exam)
Core Subjects			
§233.2	Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES	160 PPR EC-12 TExES or 2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Core Subjects (continued)			
§233.2	Core Subjects: Grades 4-8	211 Core Subjects 4-8 TExES	160 PPR EC-12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam) or 2017 edTPA: Middle Childhood Science (pilot exam) or 2018 edTPA: Middle Childhood English-Language Arts (pilot exam) or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)
Counselor			
§239.20	School Counselor: Early Childhood-Grade 12	152 School Counselor EC-12 TExES (last operational date 8/31/2021) Starting 9/1/2021 252 School Counselor EC-12 TExES	Not Applicable: Not an Initial Certificate
Dance			
§233.10	Dance: Grades 6-12	279 Dance 6-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts (pilot exam)
Early Childhood			
§233.2	Early Childhood: Prekindergarten-Grade 3	292 Early Childhood: PK-3 TExES **and** 293 Science of Teaching Reading TExES	160 PPR EC-12 TExES or 2014 edTPA: Early Childhood Education (pilot exam)
Educational Diagnostician			
§239.84	Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES (last operational date 12/31/2020) Starting 1/1/2021 251 Educational Diagnostician EC-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
English Language Arts and Reading			
§233.3	English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES	160 PPR EC-12 TExES or 2018 edTPA: Middle Childhood English-Language Arts (pilot exam)
§233.3	English Language Arts and Reading: Grades 7-12	231 English Language Arts and Reading 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: Secondary English-Language Arts (pilot exam)
§233.3	English Language Arts and Reading/Social Studies: Grades 4-8	113 English Language Arts and Reading/ Social Studies 4-8 TExES	160 PPR EC-12 TExES or 2018 edTPA: Middle Childhood English-Language Arts (pilot exam) or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)
§239.93	Reading Specialist: Early Childhood-Grade 12	151 Reading Specialist EC-12 TExES	Not Applicable: Not an Initial Certificate
English as a Second Language			
§233.7	English as a Second Language Supplemental	154 English as a Second Language Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
Gifted and Talented			
§233.9	Gifted and Talented Supplemental	162 Gifted and Talented TExES	Not Applicable: Not a Stand-alone Certificate
Health			
§233.11	Health: Early Childhood-Grade 12	157 Health Education EC-12 TExES	160 PPR EC-12 TExES or 2119 edTPA: Health Education (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Journalism			
§233.3	Journalism: Grades 7-12	256 Journalism 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: Secondary English-Language Arts (pilot exam)
Junior Reserve Officer Training			
§233.17	Junior Reserve Officer Training Corps: Grades 6-12	Not Applicable	160 PPR EC-12 TExES
Languages Other Than English			
§233.15	American Sign Language: Early Childhood-Grade 12	184 ASL EC-12 TExES **and** 073 TASC-ASL	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Arabic: Early Childhood-Grade 12	ACTFL 605 OPI – Arabic **and** 600 WPT – Arabic	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Chinese: Early Childhood-Grade 12	ACTFL 606 OPI – Chinese (Mandarin) **and** 601 WPT – Chinese (Mandarin)	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	French: Early Childhood-Grade 12	610 Languages Other Than English (LOTE) French EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	German: Early Childhood-Grade 12	611 LOTE German EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Hindi: Early Childhood-Grade 12	ACTFL 622 OPI – Hindi **and** 623 WPT – Hindi	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Italian: Early Childhood-Grade 12	ACTFL 624 OPI – Italian **and** 625 WPT – Italian	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Japanese: Early Childhood-Grade 12	ACTFL 607 OPI – Japanese **and** 602 WPT – Japanese	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Korean: Early Childhood-Grade 12	ACTFL 630 OPI – Korean **and** 631 WPT – Korean	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Languages Other Than English (continued)			
§233.15	Latin: Early Childhood-Grade 12	612 LOTE Latin EC-12 TExES	160 PPR EC-12 TExES or 2104 edTPA: Classical Languages (pilot exam)
§233.15	Portuguese: Early Childhood-Grade 12	ACTFL 632 OPI – Portuguese **and** 633 WPT – Portuguese	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Russian: Early Childhood-Grade 12	ACTFL 608 OPI – Russian **and** 603 WPT – Russian	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Spanish: Early Childhood-Grade 12	613 LOTE Spanish EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Turkish: Early Childhood-Grade 12	ACTFL 626 OPI – Turkish **and** 627 WPT – Turkish	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Vietnamese: Early Childhood-Grade 12	ACTFL 609 OPI – Vietnamese **and** 604 WPT – Vietnamese	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
Librarian			
§239.60	School Librarian: Early Childhood-Grade 12	150 School Librarian Early Childhood-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Mathematics and Science			
§233.4	Mathematics: Grades 4-8	115 Mathematics 4-8 TExES	160 PPR EC-12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam)
§233.4	Science: Grades 4-8	116 Science 4-8 TExES	160 PPR EC-12 TExES or 2017 edTPA: Middle Childhood Science (pilot exam)
§233.4	Mathematics/Science: Grades 4-8	114 Mathematics/ Science 4-8 TExES	160 PPR EC-12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam) or 2017 edTPA: Middle Childhood Science (pilot exam)
§233.4	Mathematics: Grades 7-12	235 Mathematics 7-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics (pilot exam)
§233.4	Science: Grades 7-12	236 Science 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)
§233.4	Life Science: Grades 7-12	238 Life Science 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Mathematics and Science (continued)			
§233.4	Physical Science: Grades 6-12	237 Physical Science 6-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)
§233.4	Physics/Mathematics: Grades 7-12	243 Physics/ Mathematics 7-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics (pilot exam) or 2006 edTPA: Secondary Science (pilot exam)
§233.4	Mathematics/Physical Science/Engineering: Grades 6-12	274 Mathematics/ Physical Science/ Engineering 6-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics (pilot exam) or 2006 edTPA: Secondary Science (pilot exam) or 2143 edTPA: Technology and Engineering Education (pilot exam)
§233.4	Chemistry: Grades 7-12	240 Chemistry 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)
Music			
§233.10	Music: Early Childhood-Grade 12	177 Music EC-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts (pilot exam)
Physical Education			
§233.12	Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES	160 PPR EC-12 TExES or 2011 edTPA: Physical Education (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Principal and Superintendent			
§241.20	Principal as Instructional Leader: Early Childhood-Grade 12	268 Principal as Instructional Leader TExES	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§241.35	Principal as Instructional Leader Endorsement	Not Applicable: Not an Initial Certificate (Individuals must already hold a valid certificate to serve in the role of principal to be eligible for this endorsement.)	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§242.20	Superintendent: Early Childhood-Grade 12	195 Superintendent TExES	Not Applicable: Not an Initial Certificate
Social Studies			
§233.3	Social Studies: Grades 4-8	118 Social Studies 4-8 TExES	160 PPR EC-12 TExES or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)
§233.3	Social Studies: Grades 7-12	232 Social Studies 7-12 TExES	160 PPR EC-12 TExES or 2004 edTPA: Secondary History/Social Studies (pilot exam)
§233.3	History: Grades 7-12	233 History 7-12 TExES	160 PPR EC-12 TExES or 2004 edTPA: Secondary History/Social Studies (pilot exam)
Speech Communications			
§233.3	Speech: Grades 7-12	129 Speech 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: Secondary English-Language Arts (pilot exam)
Special Education			
§233.8	Special Education: Early Childhood-Grade 12	161 Special Education EC-12 TExES	160 PPR EC-12 TExES or 2012 edTPA: Special Education (pilot exam)
§233.8	Special Education Supplemental	163 Special Education Supplemental TExES	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Special Education (continued)			
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12	181 Deaf and Hard of Hearing EC-12 TExES **and** 072 TASC or 073 TASC-ASL (required for assignment but not for certification)	160 PPR EC-12 TExES or 2012 edTPA: Special Education (pilot exam)
§233.8	Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12	182 Visually Impaired TExES **and** 183 Braille TExES or 283 Braille TExES	Not Applicable: Not a Stand-alone Certificate
Theatre			
§233.10	Theatre: Early Childhood-Grade 12	180 Theatre EC-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts (pilot exam)

Figure: 26 TAC §748.303(a)

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Within 2 hours after the child's death.	(B)(i) YES (B)(ii) Within 2 hours after the child's death.	(C)(i) YES (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in substantial physical injury to a child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it	(C)(i) NO (C)(ii) Not applicable.

mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.			
(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained; or when law enforcement responds to an alleged incident at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(7) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(8) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.

(9) The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES (A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.	(B)(i) YES (B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.	(C)(i) YES (C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of returning to the operation.
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable.
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	(C)(i) NO (C)(ii) Not applicable.

Figure: 26 TAC §748.303(e)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your	(A)(i) YES	(B)(i) NO

operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	(A)(ii) Within 24 hours after learning of the allegation.	(B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity (other than Licensing) of an employee, professional level service provider, contract staff, volunteer, or other adult at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO (B)(ii) Not applicable.
(6) An arrest; indictment; a county or district attorney accepts an "Information" regarding an official complaint against an employee, professional level service provider, contract staff, volunteer, or other adult at the operation alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?); or when law enforcement responds to an alleged incident to the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

Figure: 26 TAC §749.503(a)

Serious Incident	(i)To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Within 2 hours after the child's death.	(B)(i) YES (B)(ii) Within 2 hours after the child's death.	(C)(i) YES (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES, including whether you plan to move the child until the investigation is complete. (A)(ii) As soon as you become aware of it.	(B)(i) YES, including whether you plan to move the child until the investigation is complete. (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO

substantial physical injury to the child.			(C)(ii) Not applicable
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained; or when law enforcement responds to an alleged incident at the foster home.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable
(7) The unauthorized absence of a child who is developmentally or chronologically under 6 years old.	(A)(i) YES (A)(ii) Within 2 hours of	(B)(i) YES (B)(ii) Within 2 hours of	(C)(i) YES

	notifying law enforcement.	notifying law enforcement.	(C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.
(8) The unauthorized absence of a child who is developmentally or chronologically 6 to 12 years old.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(9) The unauthorized absence of a child who is 13 years old or older.	(A)(i) YES (A)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of	(B)(i) YES (B)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or has no intention of	(C)(i) YES (C)(ii) No later than 6 hours from when the child's absence is discovered and the child is still missing. However, you must report the child's absence immediately if the child has previously been alleged or determined to be a trafficking victim, or you believe the child has been abducted or

	returning to the foster home.	returning to the foster home.	has no intention of returning to the foster home.
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	C)(i) NO (C)(ii) Not applicable

Figure: 26 TAC §749.503(e)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your agency or a foster home unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires a foster home to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your agency who directly cares for or has access to a child in the setting has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity (other than Licensing) of an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency.	(A)(i) YES (A)(ii) As soon as possible, but no later	(B)(i) NO (B)(ii) Not applicable.

(6) An arrest, indictment, or a county or district attorney accepts an "Information" regarding an official complaint, against an employee, professional level service provider, foster parent, contract staff, volunteer, or other adult at the agency alleging commission of any crime as provided in §745.661 of this title (relating to What types of criminal convictions may affect a subject's ability to be present at an operation?); or when law enforcement responds to an alleged incident at the foster home.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

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.

Office of the Attorney General

Notice of Settlement of a Texas Water Code and Texas Health and Safety Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *State of Texas v. United States of America;* Case No. 6:20-cv-00037-H, in the U.S. District Court for the Northern District of Texas.

Background: This suit seeks to recover from federal agencies a portion of the cleanup costs incurred by the Texas Commission on Environmental Quality ("TCEQ") at the San Angelo Electric Service Company ("SESCO") State Superfund Site in San Angelo, Tom Green County, Texas (the "Site"). During SESCO's evolution from an electric engine repair shop to a facility that built, repaired and serviced electrical transformers, contaminants were spilled onto the soil and groundwater on and adjacent to the Site. The responsible parties, including several federal agencies and departments, allegedly arranged for disposal of waste at the Site.

Proposed Settlement: The lawsuit is to be settled by a Consent Decree in the U.S. District Court providing for the payment of $60,000 in Superfund response costs to the TCEQ.

For a complete description of the settlement, the proposed Consent Decree should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Thomas Edwards, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Email: Thomas.Edwards@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202001784
Lesley French
General Counsel
Office of the Attorney General
Filed: May 5, 2020

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Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Bob King's Truck Beds, LLC;* Cause No. D-1-GN-16-005455; in the 345th Judicial District Court of Travis County, Texas.

Background: Defendant Bob King's Truck Beds owns and operates a fabricated metal products plant located at 1667 East Highway 114 in Boyd, Wise County, Texas. Operations at the facility include dry abrasive cleaning and surface coating operations for the manufacturing of custom truck beds. The State initiated this environmental enforcement suit on behalf of the Texas Commission on Environmental Quality ("TCEQ"), alleging that Defendant was conducting dry abrasive cleaning and surface coating operations at the facility without a permit or other authorization from the TCEQ. The State alleged that Defendant was conducting these operations in violation of the Texas Clean Air Act and TCEQ rules promulgated thereunder, as well as two TCEQ administrative orders requiring Defendant to obtain authorization to operate under the dry abrasive cleaning and surface coating permits by rule or cease operations at the plant. After the State filed suit, Defendant obtained authorization from the TCEQ to operate under the applicable permits by rule for dry abrasive cleaning and surface coating.

Proposed Settlement: The proposed Agreed Final Judgment awards the State civil penalties in the amount of $30,000, unpaid administrative penalties in the amount of $28,730, and attorney's fees and costs in the amount of $3,010.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Erin Snody, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202001788
Lesley French
General Counsel
Office of the Attorney General
Filed: May 5, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/11/20 - 05/17/20 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 05/11/20 - 05/17/20 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 05/01/20 - 05/31/20 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 05/01/20 - 05/31/20 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-202001785
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 5, 2020

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Deep East Texas Council of Governments

Request for Proposals Broadband Network Design Services

Deep East Texas Council of Governments (DETCOG) is seeking a qualified and experienced engineering firm to provide Network Design services for a Regional Rural Broadband Network. RFP No. 2020-02 has been issued for Network Design in seven counties included in the Hurricane Harvey Disaster Declaration (Jasper, Newton, Polk, Sabine, San Augustine, San Jacinto, and Tyler). DETCOG intends to negotiate with the successful respondent to RFP No. 2020-02 to provide Network Design for five additional counties (Angelina, Houston, Nacogdoches, Shelby, and Trinity) under a separate contract. Mandatory Pre-Closing Conference May 12, 2020. Closing date June 3, 2020. Complete details of this RFP and Conditions for Submittal can be found online at **https://www.detcog.gov/rfps-rfqs.**

TRD-202001759
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
Filed: May 1, 2020

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Texas Education Agency

Request for Applications Concerning the 2020-2021 School Action Fund - Implementation Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-121 is authorized by P.L. 114-95, Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, Section 1003-School Improvement, and will be contingent on federal appropriations.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-20-121 from local educational agencies (LEAs) with schools designated by TEA as 2019-2020 Comprehensive Schools and D- and F-rated 2019-2020 Targeted Schools. A campus may not receive funding concurrently from Texas Title I Priority School (TTIPS) Cycle 4 or 5 grant funds, a School Redesign grant, a School Transformation Fund grant, or a School Action Fund grant.

Description. The purpose of this grant program is to increase the number of students in great schools by providing customized implementation support to LEAs committed to bold and aggressive action to transform low-performing schools and create better options for students. Applicants choose to implement a school action model that might include the follow action models: create a new school and restart a struggling school. The grant includes support for LEAs to design schools, school models with greater autonomy and accountability, and matched technical assistance support from TEA.

Dates of Project. The 2020-2021 School Action Fund - Implementation grant program will be implemented primarily during the 2020-2021 and 2021-2022 school years. Applicants should plan for a starting date of no earlier than September 9, 2020, and an ending date of no later than July 31, 2022, contingent on the continued availability of federal funding.

Project Amount. Approximately $5 million is available for funding the 2020-2021 School Action Fund - Implementation grant program. The TEA anticipates awarding up to five grants. The maximum award amounts will be up to $1 million. Please see the Program Guidelines for additional information. This project is funded 100 percent with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on June 11, 2020. Applicants' conference/webinar details and a registration link are included in the Program Guidelines. Questions relevant to the RFA may be emailed to DSSI@tea.texas.gov on or before June 4, 2020. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at DSSI@tea.texas.gov no later than June 4, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by June 16, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), July 14, 2020, to be eligible to be considered for funding. TEA will only accept applications by email.

TRD-202001800
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 6, 2020

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Request for Applications Concerning the 2020-2021 School Action Fund - Planning Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-120 is authorized by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Section 1003(g), and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and will be contingent on federal appropriations and approval of the Texas Education Agency's (TEA's) application for CARES Act funding.

Eligible Applicants. TEA is requesting applications under RFA #701-20-120 from local educational agencies (LEAs) with schools designated by TEA as 2019-2020 Comprehensive Schools and D- and F-rated 2019-2020 Targeted Schools for new schools, restarts, and reassigns and schools designated by TEA as non-Comprehensive and non-Targeted C- and D-rated campuses for redesigns. A campus may not receive funding concurrently from Texas Title I Priority School (TTIPS) Cycle 4 or 5 grant funds, a School Redesign grant, a School Transformation Fund grant, or a School Action Fund grant.

Description. The purpose of this grant program is to increase the number of students in great schools by providing customized planning support to LEAs committed to bold and aggressive action to transform low-performing schools and create better options for students. Applicants choose to implement a school action model that might include the follow action models: create a new school; restart a struggling school; redesign an existing school; and reassign students from a struggling school. The grant includes support for LEAs to design schools, school models with greater autonomy and accountability, and matched technical assistance support from TEA.

Dates of Project. The 2020-2021 School Action Fund - Planning grant program will be implemented primarily during the 2020-2021 school year. Applicants should plan for a starting date of no earlier than September 9, 2020, and an ending date of no later than July 31, 2021, contingent on the continued availability of federal funding.

Project Amount. Approximately $16 million is available for funding the 2020-2021 School Action Fund - Planning grant program. The TEA anticipates awarding up to 50 grants. The maximum award amounts will range from approximately up to $300,000 to $315,000 and are dependent on action type. Please see the Program Guidelines for additional information. This project is funded 100 percent with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on June 11, 2020. Applicants' conference/webinar details and a registration link are included in the Program Guidelines. Questions relevant to the RFA may be emailed to DSSI@tea.texas.gov on or before June 4, 2020. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at DSSI@tea.texas.gov no later than June 4, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by June 16, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), July 14, 2020, to be eligible to be considered for funding. TEA will only accept applications by email.

TRD-202001799
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 6, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 16, 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 **June 16, 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: Blue Origin Texas, LLC; DOCKET NUMBER: 2019-1752-PWS-E; IDENTIFIER: RN104961164; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director (ED) for review and approval prior to the construction of a new public water supply; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide continuous and effective disinfection that can be secured under all conditions; 30 TAC §290.43(c)(1), by failing to provide the southern 0.01-million gallon (MG) ground storage tank (GST) at Home Base and the 0.002-MG GST at XEEX with a gooseneck roof vent or a roof ventilator designed by an engineer, and installed in strict accordance with American Water Works Association (AWWA) standards and equipped with a corrosion-resistant 16-mesh or finer screen; 30 TAC §290.43(c)(2), by failing to ensure that the hatches at the southern 0.01-MG GST at Home Base and the 0.002-MG GST at XEEX remain locked except during inspections and maintenance; 30 TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current AWWA standards; 30 TAC §290.43(c)(4), by failing to provide the two 0.01-MG GSTs at Home Base and the 0.002-MG GST at XEEX with liquid level indicators; 30 TAC §290.43(d)(2), by failing to provide the pressure tanks at the Penn Well and XEEX with a pressure release device and an easily readable pressure gauge at XEEX; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.45(d)(2)(B)(v) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 220 gallons at the XEEX pressure plane; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(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(l), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $8,823; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Cagle Fishing & Rental Tools, Incorporated; DOCKET NUMBER: 2019-1776-MSW-E; IDENTIFIER: RN110736014; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: oilfield tool rental company; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: City of Tahoka; DOCKET NUMBER: 2019-1740-PWS-E; IDENTIFIER: RN101234847; LOCATION: Tahoka, Lynn County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligram per liter of chloramine (measure as total chlorine) throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; PENALTY: $609; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: Cody Lewis dba Deer Springs Water; DOCKET NUMBER: 2019-1768-PWS-E; IDENTIFIER: RN100824937; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligram per liter of free chlorine throughout the distribution system at all times; PENALTY: $305; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: DEANVILLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-1789-PWS-E; IDENTIFIER: RN101442085; LOCATION: Deanville, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(4), by failing to provide ground storage tanks with a liquid level indicator; 30 TAC §290.45(b)(1)(D)(iii), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2018-0200-PWS-E, Ordering Provision Number 2.e, by failing to provide two or more pumps that have a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; 30 TAC §290.46(l), by failing to flush all the dead-end mains at monthly intervals; 30 TAC §290.46(m) and TCEQ Agreed Order Docket Number 2018-0200-PWS-E, Ordering Provision Number 2.a.iii, by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the systems facilities and equipment; 30 TAC §290.46(s)(1) and TCEQ Agreed Order Docket Number 2018-0200-PWS-E, Ordering Provision Number 2.a.i, by failing to calibrate the facility's well meters for Well Numbers 1, 3, and 4 at least once every three years; and 30 TAC §290.121(a) and (b) and TCEQ Agreed Order Docket Number 2018-0200-PWS-E, Ordering Provision Number 2.a.iv, by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $1,524; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2019-1765-AIR-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), and 122.143(4), New Source Review Permit Numbers 9708 and PSDTX861M3, Special Conditions Number 1, Federal Operating Permit Number O1555, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,950; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: Gallier Enterprises, Incorporated and United States Border Patrol; DOCKET NUMBER: 2019-1412-PST-E; IDENTIFIER: RN102260270; LOCATION: Laredo, Webb County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to have a valid, current TCEQ delivery certificate posted at the facility in a location where the document is clearly visible at all times; 30 TAC §334.10(b)(2), by failing to assure that all underground storage tanks (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1) and (2)(A), and (d)(B)(ii) and TWC §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $5,988; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Juan J. Quiroz, Jr.; DOCKET NUMBER: 2019-1775-WOC-E; IDENTIFIER: RN106135676; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.5(a) and §30.331(b) and TWC, §26.0301(c) and §37.003, by failing to have a valid and current wastewater operator license prior to performing process control activities at a wastewater treatment facility; PENALTY: $424; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: Kenneth Patrick Whittlesey; DOCKET NUMBER: 2019-1036-MLM-E; IDENTIFIER: RN109240887 and RN110883089; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: landscape supply business; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.4(g) and (k) and Water Pollution Abatement Plan (WPAP) Number 11001173, Standard Condition Number 4, by failing to submit proof of recordation of notice in the county deed records to the Austin Regional Office within 60 days of receiving written approval of a WPAP modification; 30 TAC §213.4(k) and WPAP Number 11001173, Special Condition II, by failing to dewater the temporary sediment basin via irrigation within 72 hours of a rain event; 30 TAC §213.4(k), TWC, §26.121(a)(1), WPAP Number 11001173, Standard Condition Number 15, and Texas Pollutant Discharge Elimination System General Permit Number TXR05EH98, Part II, Section B Number 8, by failing to prevent a discharge of stormwater associated with industrial activities to any water in the state; and 30 TAC §213.4(k) and §213.5(f)(1) and WPAP Number 11001173, Standard Condition Number 7, by failing to provide written notification of intent to commence construction no later than 48 hours prior to commencement of the regulated activity; PENALTY: $26,657; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Lion Elastomers LLC; DOCKET NUMBER: 2019-1771-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: rubber manufacturing facility; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9908, Special Conditions Number 1, Federal Operating Permit Number O1224, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: RGI MATERIALS, INCORPORATED; DOCKET NUMBER: 2019-1585-WQ-E; IDENTIFIER: RN105195127; LOCATION: Porter, Montgomery County; TYPE OF FACILITY: sand and gravel operation; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR05U571, Section J, Number 5(b), by failing to prevent the unauthorized discharge of process water into or adjacent to any water in the state; PENALTY: $23,813; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,906; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Richmond Signature Homes, LLC.; DOCKET NUMBER: 2019-1774-WQ-E; IDENTIFIER: RN110898186; LOCATION: Mansfield, Johnson 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; PENALTY: $7,826; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: RMR Retail, Incorporated dba Fuel Depot 30; DOCKET NUMBER: 2019-1748-PST-E; IDENTIFIER: RN102852548; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.7(d)(1)(B) and (3), by failing to provide written notice to the agency of any changes in the operational status of the UST system within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $12,248; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2019-1731-PWS-E; IDENTIFIER: RN101189736; LOCATION: Pineland, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1), Texas Health and Safety Code (THSC), §341.0315(c), and TCEQ Agreed Order Docket Number 2016-0087-PWS-E, Ordering Provision Number 2.c.i, by failing to comply with the maximum contaminant level (MCL) of 0.060 milligram per liter (mg/L) for haloacetic acids based on the locational running annual average; 30 TAC §290.115(f)(1), THSC, §341.0315(c), and TCEQ

Agreed Order Docket Number 2016-0087-PWS-E, Ordering Provision Number 2.c.ii, by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes based on the locational running annual average; and 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director for the January 1, 2019 - June 30, 2019, monitoring period; PENALTY: $1,885; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2019-1730-PWS-E; IDENTIFIER: RN101274165; LOCATION: Pineland, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1), Texas Health and Safety Code, §341.0315(c), and TCEQ Agreed Order Docket Number 2016-0007-PWS-E, Ordering Provision Number 2.c.i, by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: $250; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Silvia M. Orozco; DOCKET NUMBER: 2019-0366-OSS-E; IDENTIFIER: RN110456084; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.3(i) and §285.36, by failing to properly abandon an unauthorized cesspool; and Texas Health and Safety Code, §366.004 and §366.051(a) and TWC, §26.121(a)(1), by failing to dispose of sewage into an authorized system resulting in an unauthorized discharge; PENALTY: $500; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: Southwestern Bell Telephone Company; DOCKET NUMBER: 2019-1744-PST-E; IDENTIFIER: RN102386299; LOCATION: Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system that supports an emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(2)(B) and TWC, §26.3475(b), by failing to perform release detection for the suction piping associated with the UST system; PENALTY: $2,955; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(18) COMPANY: TXBR Ramblewood MHP, LLC; DOCKET NUMBER: 2019-1759-PWS-E; IDENTIFIER: RN101275378; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j), Texas Health and Safety Code (THSC), §341.0351, and TCEQ Agreed Order Docket Number 2017-0367-PWS-E, Ordering Provision Number 2.c, by failing to notify the executive director and receive an approval prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.45(f)(1), (4), and (5), THSC, §341.0315(c), and TCEQ Agreed Order Docket Number 2017-0367-PWS-E, Ordering Provision Number 2.a, by failing to provide a water purchase contract that authorizes a maximum daily purchase rate or uniform purchase rate to meet a minimum production capacity of 0.6 gallons per minute (gpm) per connection, and that authorizes a maximum hourly purchase rate plus the actual service pump capacity of at least 2.0 gpm per connection, or at least 1,000 gpm and able to meet peak hourly demands, whichever is less for systems which purchase water under direct pressure; PENALTY: $5,368; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: UNIVERSAL FOREST PRODUCTS TEXAS LLC; DOCKET NUMBER: 2019-1783-MWD-E; IDENTIFIER: RN100214493; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014996001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Wastewater Residuals Management, LLC; DOCKET NUMBER: 2019-1770-IWD-E; IDENTIFIER: RN102329240; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0003987000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,312; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202001782
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 5, 2020

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Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant With Enhanced Controls: Proposed Air Quality Registration Number 159749

APPLICATION. Cactus Readymix, LLC, P.O. Box 271, Sinton, Texas 78387-0271 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 159749 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 3465 County Road 75, Robstown, Nueces County, Texas 78380. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.743449&lng=-97.699666&zoom=13&type=r. This application was submitted to the TCEQ on January 15, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on February 4, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, June 11, 2020, at 6:00 p.m.

Members of the public may listen to the hearing by calling, toll free, (415) 655-0052 and entering access code 517-964-609. Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 827-867-243. Those without internet access may call (512) 239-1201 before the hearing begins for assistance in accessing the hearing and participating telephonically.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Corpus Christi Regional Office, located at NRC Bldg Ste 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Cactus Readymix, LLC, P.O. Box 271, Sinton, Texas 78387-0271, or by calling Mr. Daniel Eberhard, Environmental Coordinator, Bradley Concrete & Equipment Services at (409) 289-1466.

Amended Notice Issuance Date: April 30, 2020

TRD-202001789
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 5, 2020

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Enforcement Orders

An agreed order was adopted regarding TEX-SAN SITE SERVICES, LLC, Docket No. 2018-1425-MLM-E on May 5, 2020, assessing $2,625 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Icon Builders, L.L.C., Docket No. 2019-0482-WQ-E on May 5, 2020, assessing $4,313 in administrative penalties with $862 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Georgetown, Docket No. 2019-0501-MWD-E on May 5, 2020, assessing $4,762 in administrative penalties with $952 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Surjit Singh dba Express Food Mart, Docket No. 2019-0628-PST-E on May 5, 2020, assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RFP Maintenance, Inc., Docket No. 2019-0726-PWS-E on May 5, 2020, assessing $163 in administrative penalties with $32 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding John D. Hall, Docket No. 2019-0781-WQ-E on May 5, 2020, assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oldcastle Infrastructure, Inc., Docket No. 2019-0808-AIR-E on May 5, 2020, assessing $4,375 in administrative penalties with $875 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S & R BUSINESS, INC. dba Angels Grocery, Docket No. 2019-0854-PST-E on May 5, 2020, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ferris, Docket No. 2019-0865-PWS-E on May 5, 2020, assessing $476 in administrative penalties with $95 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UNITED PARCEL SERVICE, INC., Docket No. 2019-0938-PST-E on May 5, 2020, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nalco Company LLC, Docket No. 2019-0942-AIR-E on May 5, 2020, assessing $6,545 in administrative penalties with $1,309 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LW Food Mart LLC, Docket No. 2019-0948-PST-E on May 5, 2020, assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding N & M GROUP LLC dba Howdy Food Mart, Docket No. 2019-1032-PST-E on May 5, 2020, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Solvay Specialty Polymers USA, L.L.C., Docket No. 2019-1045-AIR-E on May 5, 2020, assessing $4,255 in administrative penalties with $851 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of San Augustine, Docket No. 2019-1053-MWD-E on May 5, 2020, assessing $4,175 in administrative penalties with $835 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS HEAT TREATING, INC., Docket No. 2019-1095-MLM-E on May 5, 2020, assessing $4,000 in administrative penalties with $800 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clean Harbors Deer Park, LLC, Docket No. 2019-1170-AIR-E on May 5, 2020, assessing $4,538 in administrative penalties with $907 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Louisiana-Pacific Corporation, Docket No. 2019-1188-AIR-E on May 5, 2020, assessing $3,563 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LOYOLA GROCERIES INC., Docket No. 2019-1191-PST-E on May 5, 2020, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TSS Business, Inc. dba Corner Food Mart, Docket No. 2019-1232-PST-E on May 5, 2020, assessing $3,873 in administrative penalties with $774 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Owens Corning Composite Materials, LLC, Docket No. 2019-1250-AIR-E on May 5, 2020, assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHORE-TECH, INC., Docket No. 2019-1334-PWS-E on May 5, 2020, assessing $427 in administrative penalties with $85 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Buckeye Texas Processing LLC, Docket No. 2019-1363-AIR-E on May 5, 2020, assessing $4,425 in administrative penalties with $885 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding H4WR Phase 4, LLC, Docket No. 2019-1399-EAQ-E on May 5, 2020, assessing $6,563 in administrative penalties with $1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jong Song dba Beltway Grill Shell, Docket No. 2019-1407-PST-E on May 5, 2020, assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding San Antonio Water System, Docket No. 2019-1408-EAQ-E on May 5, 2020, assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Silviry Mitchell, Docket No. 2019-1488-MSW-E on May 5, 2020, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Martindale Water Supply Corporation, Docket No. 2019-1515-PWS-E on May 5, 2020, assessing $300 in administrative penalties with $60 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SANDERSON FARMS, INC. (PRODUCTION DIVISION), Docket No. 2019-1519-IWD-E on May 5, 2020, assessing $6,375 in administrative penalties with $1,275 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Natural Gas Pipeline Company of America LLC, Docket No. 2019-1524-AIR-E on May 5, 2020, assessing $813 in administrative penalties with $162 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding JONATHAN FOUTZ, Docket No. 2020-0013-WOC-E on May 5, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding GERALD A. AND LINDA D. GORDON, Docket No. 2020-0038-WR-E on May 5, 2020, assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Mack A. Punch, Docket No. 2020-0067-WOC-E on May 5, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Robinson Russell S. Jr., Docket No. 2020-0089-OSS-E on May 5, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding BROOKSON BUILDERS, LLC, Docket No. 2020-0129-WQ-E on May 5, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding ROBERT CAMP, Docket No. 2020-0133-WOC-E on May 5, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding VICTOR SILVA, Docket No. 2020-0135-WOC-E on May 5, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Bells Drilling Service LLC, Docket No. 2020-0136-WR-E on May 5, 2020, assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001791
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 6, 2020

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Enforcement Orders

A default order was adopted regarding Wallace Hardie, Docket No. 2018-0477-WOC-E on May 6, 2020, assessing $938 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Huntington, Docket No. 2018-1034-MWD-E on May 6, 2020, assessing $50,488 in administrative penalties with $10,097 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Aransas Pass, Docket No. 2018-1300-MWD-E on May 6, 2020, assessing $93,350 in administrative penalties with $18,670 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding MA FOOD MART, INC. dba Woodhaven Food Mart, Docket No. 2018-1570-PST-E on May 6, 2020, assessing $4,687 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Michael Fensterbush and Heidi Fensterbush dba Valley Estates, Docket No. 2018-1623-PWS-E on May 6, 2020, assessing $1,155 in administrative penalties with $990 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding David Morse dba D&M Trash Removal, Docket No. 2018-1649-MSW-E on May 6, 2020, assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Nelson Mena dba KUBA Transport, Docket No. 2019-0029-PST-E on May 6, 2020, assessing $1,352 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ben Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KELLY BURT DOZER, INC., Docket No. 2019-0074-WQ-E on May 6, 2020, assessing $19,688 in administrative penalties with $3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2019-0112-AIR-E on May 6, 2020, assessing $14,250 in administrative penalties with $2,850 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding WILDWOOD MHP OF LUBBOCK LLC, Docket No. 2019-0198-PWS-E on May 6, 2020, assessing $41,220 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jarvis Christian College, Docket No. 2019-0199-PWS-E on May 6, 2020, assessing $674 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding William Brent Davis dba Cypresswood Estates, Docket No. 2019-0224-PWS-E on May 6, 2020, assessing $870 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Follett, Docket No. 2019-0270-PWS-E on May 6, 2020, assessing $3,053 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF Corporation, Docket No. 2019-0283-AIR-E on May 6, 2020, assessing $20,188 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Sherwin-Williams Manufacturing Company, Docket No. 2019-0288-AIR-E on May 6, 2020, assessing $8,252 in administrative penalties with $1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KD GILL LLC dba Four Corner, Docket No. 2019-0554-PST-E on May 6, 2020, assessing $8,154 in administrative penalties with $1,630 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Lawn, Docket No. 2019-0561-PWS-E on May 6, 2020, assessing $90 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 4-D Water Company, LLC, Docket No. 2019-0716-PWS-E on May 6, 2020, assessing $1,527 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Comanche, Docket No. 2019-0759-PWS-E on May 6, 2020, assessing $742 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding U.S. Silica Company, Docket No. 2019-0800-AIR-E on May 6, 2020, assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas Environmental, LLC, Docket No. 2019-0830-MWD-E on May 6, 2020, assessing $6,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Rio Vista, Docket No. 2019-0839-MWD-E on May 6, 2020, assessing $44,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Goodsprings Water Supply Corporation, Docket No. 2019-0898-PWS-E on May 6, 2020, assessing $210 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding ELM RIDGE WATER COMPANY, INC., Docket No. 2019-0908-PWS-E on May 6, 2020, assessing $112 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Copano Processing LLC, Docket No. 2019-0919-AIR-E on May 6, 2020, assessing $8,550 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Triple C Concrete of Lubbock, Ltd, Docket No. 2019-0959-AIR-E on May 6, 2020, assessing $14,120 in administrative penalties with $2,824 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS USA LLC, Docket No. 2019-0975-AIR-E on May 6, 2020, assessing $26,550 in administrative penalties with $5,310 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Victoria County Water Control and Improvement District No. 2, Docket No. 2019-1010-PWS-E on May 6, 2020, assessing $568 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Reagent Chemical & Research, Inc., Docket No. 2019-1022-IWD-E on May 6, 2020, assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Round Rock, Docket No. 2019-1082-WQ-E on May 6, 2020, assessing $5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Miller Milling Company, LLC, Docket No. 2019-1112-AIR-E on May 6, 2020, assessing $10,291 in administrative penalties with $2,058 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001795
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 6, 2020

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Notice of Public Comment Period on Proposed Revisions to 30 TAC Chapter 281

The Texas Commission on Environmental Quality (commission) proposes to amend §281.18 of 30 Texas Administrative Code (TAC) Chapter 281, Applications Processing.

The proposed rulemaking would allow for the use of electronic mail for application deficiency notices and responses.

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 2019-108-281-OW. The comment period closes on June 16, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Laurie Fleet, Wastewater Permitting Section, (512) 239-5445.

TRD-202001741
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 1, 2020

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Notice of Public Comment Period on Proposed Revisions to 30 TAC Chapter 290

The Texas Commission on Environmental Quality (commission) proposes to amend §290.39 and §290.122 of 30 Texas Administrative Code (TAC) Chapter 290, Public Drinking Water.

The proposed rulemaking would implement House Bill 3552, 86th Texas Legislature, 2019, to require public water systems to notify their customers prior to permanently terminating the addition of fluoride to drinking water.

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 2020-007-290-OW. The comment period closes June 16, 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 Patrick Kading, Drinking Water Special Functions Section, (512) 239-4670.

TRD-202001744
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 1, 2020

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Notice of Public Comment Period on Proposed Revisions to 30 TAC Chapter 293

The Texas Commission on Environmental Quality (commission) proposes amendments to §§293.3, 293.11, 293.14, 293.15, 293.44, 293.81, 293.94, 293.201, and 293.202; new §293.90 and §§293.132 - 293.137; and the repeal of §§293.132 - 293.136 of 30 TAC Chapter 293, Water Districts.

The proposed rulemaking would implement Senate Bill (SB) 1234, 82nd Texas Legislature, 2011; SB 1987 and SB 2014, 85th Texas Legislature, 2017; and House Bill (HB) 304, HB 440, HB 2590, HB 2914, SB 239, and SB 911, 86th Texas Legislature, 2019, to revise creation, bond, road powers, and dissolution rules for water districts including their general provisions and annual reporting requirements.

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 2020-008-293-OW. The comment period closes June 16, 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 Jaime Ealey, Districts Section, (512) 239-4739.

TRD-202001755
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 1, 2020

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Notice of Public Comment Period on Proposed Revisions to 30 TAC Chapters 305 and 330

The Texas Commission on Environmental Quality (commission) proposes to amend §305.53 of 30 Texas Administrative Code (TAC) Chapter 305, Consolidated Permits. Additionally, the commission proposes to amend §§330.3, 330.13, 330.59, and 330.73 and proposes the repeal of §§330.261, 330.263, 330.265, 330.267, 330.269, 330.271, 330.273, 330.275, 330.277, 330.279, 330.281, 330.283, 330.285, 330.287, and 330.289 of 30 TAC Chapter 330, Municipal Solid Waste.

The proposed rulemaking would implement House Bill (HB) 1331, 86th Texas Legislature, 2019, by increasing permit application fees; HB 1435, 86th Texas Legislature, by providing for site assessments for new permits and major permit amendments; and HB 1953, 86th Texas Legislature, by adding an exempt activity for beneficial conversion of plastics and recoverable materials using pyrolysis and gasification processes. The proposed rulemaking would also repeal the rules found to be obsolete in Chapter 330, Subchapter F, Analytical Quality Assurance and Quality Control, as a result of the Quadrennial Rules Review of Chapter 330.

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 2020-006-305-WS. The comment period closes June 16, 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 Ruben Meza, P.E., Municipal Solid Waste Permits Section, (512) 239-2580.

TRD-202001758
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 1, 2020

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Notice of Public Meeting for Water Quality Land Application Permit for Municipal Wastewater: New Proposed Permit No. WQ0015835001

APPLICATION. Silesia Properties, LP, 24114 Blanco Road, San Antonio, Texas 78260, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed TCEQ Permit No. WQ0015835001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 365,000 gallons per day via public access subsurface area drip dispersal system with a minimum area of 84 acres. This permit will not authorize a discharge of pollutants into waters in the State.

The wastewater treatment facility and disposal site will be located at 26226 West State Highway 46, in the City of Spring Branch, Comal County, Texas 78070. The wastewater treatment facility and disposal site will be located in the drainage basin of Guadalupe River Above Canyon Lake in Segment No. 1806 of the Guadalupe River Basin. 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 the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.5075%2C29.815277&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, 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.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about 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. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response 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:

Tuesday, June 9, 2020 at 7:00 p.m.

Members of the public may listen to the meeting by calling, toll free, (415) 930-5321 and entering access code 647-255-712. Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 585-699-835. Those without internet access may call (512) 239-1201 before the meeting begins for assistance in accessing the meeting and participating telephonically.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the 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. *Si desea información en español, puede llamar (800)*

687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Mammen Family Public Library, 131 Bulverde Crossing, Bulverde, Texas. Further information may also be obtained from Silesia Properties, LP at the address stated above or by calling Mr. Aaron Laughlin, P.E., Steger Bizzell at (512) 930-9412..

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.

Issuance Date: May 4, 2020

TRD-202001790
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 6, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 27, 2020, to May 1, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, May 8, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, June 7, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Gulf Copper & Manufacturing Corporation

Location: The project site is located in the Sabine-Neches Canal, at 5700 Procter Street Extension, in Port Arthur, Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.918418, -93.888839

Project Description: The applicant proposes to modify and extend the construction time period for their previous permit, 19845, that lapsed 31 December 2015. The applicant proposes to deepen the dredge depth at their dry dock slip (2.64 acres) to (-) 40 feet mean lower low water (MLLW) with a 1-foot allowable over depth as well as requests to dredge the southwest corner slip (0.73 acres) to (-) 30 feet MLLW with a 1-foot allowable over depth and an additional 10 years of mechanical and/or hydraulic maintenance dredging of Gulf Copper, Port Arthur, Texas, dock facilities. The applicant also proposes to extend the dredge pad footprint to 140' 2" downstream and 67' 5" upstream as well as extend the dredge footprint out to the Federal Channel Limit. An estimated 109,500 cubic yards of material is requested to be dredged. The applicant proposes for the dredge material to be relocated and placed in USACE Placement Area 11 and/or Placement Area 12 (to include effluent discharge).

The applicant also proposes to install a 581-linear-foot sheet-pile bulkhead, to support a new dredge slip area and expand water front facilities. The proposed project will provide deeper dredge depth to accommodate larger dry dock and additional vessels.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1993-00889. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act.

CMP Project No: 20-1154-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at *pialegal@glo.texas.gov.* Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at *federal.consistency@glo.texas.gov.*

TRD-202001786
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: May 5, 2020

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Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

Office of the Governor, Public Safety Office (PSO)

The Governor's Public Safety Office (PSO) is planning to apply for federal fiscal year (FFY) 2020 formula funds under the Edward Byrne Justice Assistance Grant (JAG) program administered by the U.S. Department of Justice, Bureau of Justice Assistance. The FFY 2020 allocation to Texas is estimated to be $13.3 million.

PSO proposes to use the FFY 2020 award to fund initiatives that target border security, violent crimes, organized criminal activity, improve technology, substance abuse diversion programs and offender reentry into the community.

Comments regarding the proposed use of JAG funds should be submitted in writing within 30 days from the date of this announcement in the *Texas Register.* Comments may be submitted to the attention of Mr. Andrew Friedrichs, Public Safety Office (PSO), Texas Office of the Governor, by email at Andrew.Friedrichs@gov.texas.gov or by mail to the Office of the Governor, Public Safety Office, Post Office Box 12428, Austin, Texas 78711. You may also request a copy of the application upon its completion from Mr. Friedrichs.

TRD-202001781
Aimee Snoddy
PSO Executive Director
Office of the Governor
Filed: May 5, 2020

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Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs adopted amendments to 10 TAC §10.613 in the May 8, 2020, issue of the *Texas Register* (45 TexReg 3036). In subsection (j), the word "owner" was

inadvertently omitted from the first sentence. Subsection (j) should read as follows:

(j) Housing Tax Credit Units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

TRD-202001780

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Texas Department of Transportation

Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each state fiscal biennium, up to six design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications (RFQ) and requires the department to publish a notice of such issuance in the *Texas Register.* The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the rules). The enabling legislation, as well as the rules, govern the submission and processing of qualifications statements (QSs), and provide for the issuance of an RFQ that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of an RFQ to design, construct, and maintain the I-35E Phase 2 Project (Project) in Dallas County. The I-35E Phase 2 Project consists of the full reconstruction and widening of this segment of the I-35E corridor and includes the addition of one general purpose lane in each direction and full reconstruction and "grandfathering" of the existing two reversible tolled managed lanes, along with the construction of continuous frontage roads and numerous intersection improvements. The Project has an estimated design-build cost of approximately $600 Million.

Through this notice, the department is seeking QSs from teams interested in entering into a design-build contract and a capital maintenance contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract, and a capital maintenance contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and evaluating the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and a capital maintenance contract for the Project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: project qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on May 15, 2020. Copies of the RFQ will be available at the following website:

http://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/i-35ephase2/rfq.html

QSs will be due by 12:00 p.m. (noon) CST on June 25, 2020, at the address specified in the RFQ.

TRD-202001783
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 5, 2020

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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