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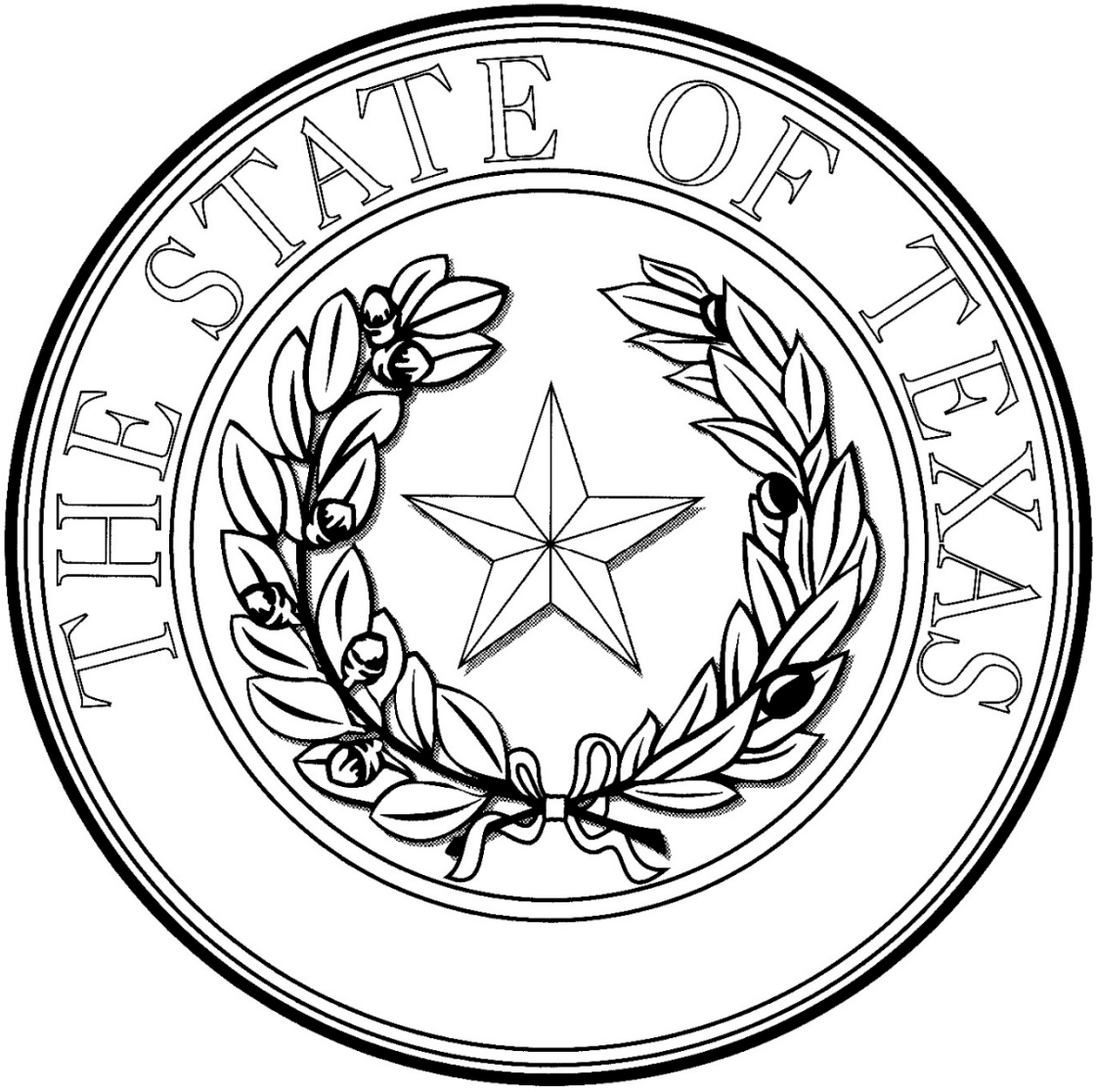

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In This Issue

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.

Proclamation 41-3726

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, on March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and, under the authority vested in the Governor by Section 418.014 of the Texas Government Code, declared a state of disaster for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services has determined that, as of March 19, 2020, COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, also on March 19, 2020, and March 31, 2020, the Governor issued executive orders 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, and mandated certain obligations for Texans that are recommended by federal guidelines and aimed at slowing the spread of COVID-19; and

WHEREAS, Section 41.001(a)(2) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on May 2, 2020; and

WHEREAS, on March 18, 2020, the Governor suspended Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 only to the next uniform election date, occurring on November 3, 2020; and

WHEREAS, on March 20, 2020, the Governor issued a proclamation postponing the runoff primary election date to July 14, 2020, and early voting by personal appearance for the runoff primary election begins on July 6, 2020, in accordance with Section 85.001(b) of the Texas Election Code; and

WHEREAS, Section 41.007(d) of the Texas Election Code provides that no other election may be held on the date of a primary election; and

WHEREAS, Section 41.008 of the Texas Election Code provides that an election held on a date not permitted is void; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day; and

WHEREAS, Section 363.251(a) of the Texas Local Government Code authorizes that a crime control and prevention district created by a political subdivision may hold a referendum on the question of whether to continue the district on the next uniform election date authorized by Section 41.001(a) of the Texas Election Code; and

WHEREAS, the Fort Worth Crime Control and Prevention District has ordered a special election on the question of whether to continue the district, and such election was scheduled for May 2, 2020; and

WHEREAS, Section 41.0011 of the Texas Election Code provides that a special election may be held as an emergency election before the appropriate uniform election date if a political subdivision asks the Governor for permission to do so and the Governor determines that an emergency exists; and

WHEREAS, the Fort Worth Crime Control and Prevention District desires to order a special election as an emergency election on the question of whether to continue the district pursuant to Section 41.0011 of the Texas Election Code and has asked the Governor for permission to hold such election prior to November 3, 2020; and

WHEREAS, an emergency exists under Section 41.0011 of the Texas Election Code due to the circumstances presented by the COVID-19 disaster and because the Fort Worth Crime Control and Prevention District is not able to wait until November 3, 2020, to hold a special election on the question of whether to continue the district; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Sections 41.007(d) and 41.008 of the Texas Election Code to the extent necessary to allow the Fort Worth Crime Control and Prevention District to order its special election, to occur on July 14, 2020, as an emergency election on the question of whether to continue the district pursuant to Section 41.0011(b) of the Texas Election Code. I further suspend Section 85.001(a) of the Texas Election Code to the extent necessary to allow early voting by personal appearance for the special election to begin not earlier than Monday, July 6, 2020, and to run concurrently with the early voting period for the runoff primary election.

The authority ordering the election under Section 3.004 of the Texas Election Code is the authority authorized to make the decision to postpone its election in accordance with this proclamation.

Early voting by personal appearance shall begin on Monday, July 6, 2020, in accordance with Section 85.001(d) of the Texas Election Code so that it runs concurrently with the early voting period for the runoff primary election.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 2nd day of April, 2020.

Greg Abbott, Governor

TRD-202001330

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Proclamation 41-3727

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, on March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and, under the authority vested in the Governor by Section 418.014 of the Texas Government Code, declared a state of disaster for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services has determined that, as of March 19, 2020, COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, also on March 19, 2020, and March 31, 2020, the Governor issued executive orders 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, and mandated certain obligations for Texans that are recommended by federal guidelines and aimed at slowing the spread of COVID-19; and

WHEREAS, Section 41.001(a)(2) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on May 2, 2020; and

WHEREAS, on March 18, 2020, the Governor suspended Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 only to the next uniform election date, occurring on November 3, 2020; and

WHEREAS, on March 20, 2020, the Governor issued a proclamation postponing the runoff primary election date to July 14, 2020, and early voting by personal appearance for the runoff primary election begins on July 6, 2020, in accordance with Section 85.001(b) of the Texas Election Code; and

WHEREAS, Section 41.007(d) of the Texas Election Code provides that no other election may be held on the date of a primary election; and

WHEREAS, Section 41.008 of the Texas Election Code provides that an election held on a date not permitted is void; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day; and

WHEREAS, Section 363.251(a) of the Texas Local Government Code authorizes that a crime control and prevention district created by a political subdivision may hold a referendum on the question of whether to continue the district on the next uniform election date authorized by Section 41.001(a) of the Texas Election Code; and

WHEREAS, the Crowley Crime Control and Prevention District has ordered a special election on the question of whether to continue the district, and such election was scheduled for May 2, 2020; and

WHEREAS, Section 41.0011 of the Texas Election Code provides that a special election may be held as an emergency election before the appropriate uniform election date if a political subdivision asks the Governor for permission to do so and the Governor determines that an emergency exists; and

WHEREAS, the Crowley Crime Control and Prevention District desires to order a special election as an emergency election on the question of whether to continue the district pursuant to Section 41.0011 of the Texas Election Code and has asked the Governor for permission to hold such election prior to November 3, 2020; and

WHEREAS, an emergency exists under Section 41.0011 of the Texas Election Code due to the circumstances presented by the COVID-19 disaster and because the Crowley Crime Control and Prevention District is not able to wait until November 3, 2020, to hold a special election on the question of whether to continue the district; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Sections 41.007(d) and 41.008 of the Texas Election Code to the extent necessary to allow the Crowley Crime Control and Prevention District to order its special election to occur on July 14, 2020, as an emergency election on the question of whether to continue the district pursuant to Section 41.0011(b) of the Texas Election Code. I further suspend Section 85.001(a) of the Texas Election Code to the extent necessary to allow early voting by personal appearance for the special election to begin not earlier than Monday, July 6, 2020, and to run concurrently with the early voting period for the runoff primary election.

The authority ordering the election under Section 3.004 of the Texas Election Code is the authority authorized to make the decision to postpone its election in accordance with this proclamation.

Early voting by personal appearance shall begin on Monday, July 6, 2020, in accordance with Section 85.001(d) of the Texas Election Code so that it runs concurrently with the early voting period for the runoff primary election.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of April, 2020.

Greg Abbott, Governor

TRD-202001380

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Proclamation 41-3728

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, on March 13, 2020, the Governor of Texas certified that the novel coronavirus (COVID-19) poses an imminent threat of disaster and, under the authority vested in the Governor by Section 418.014 of the Texas Government Code, declared a state of disaster for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services has determined that, as of March 19, 2020, COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, on March 19, 2020 and March 31, 2020, the Governor issued executive orders 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, and mandated certain obligations for Texans that are based on federal guidelines and aimed at slowing the spread of COVID-19; and

WHEREAS, Section 41.001(a)(2) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on May 2, 2020; and

WHEREAS, on March 18, 2020, the Governor suspended Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 only to the next uniform election date, occurring on November 3, 2020; and

WHEREAS, on March 20, 2020, the Governor issued a proclamation postponing the runoff primary election date to July 14, 2020, and early voting by personal appearance for the runoff primary election begins on July 6, 2020, in accordance with Section 85.001(b) of the Texas Election Code; and

WHEREAS, Section 41.007(d) of the Texas Election Code provides that no other election may be held on the date of a primary election; and

WHEREAS, Section 41.008 of the Texas Election Code provides that an election held on a date not permitted is void; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day; and

WHEREAS, Texas law provides that a political subdivision may, on the fourth anniversary of the date the local street maintenance program originally took effect, hold an election on the question of whether to reauthorize a local street maintenance program on the next uniform election date authorized by Section 41.001(a) of the Texas Election Code; and

WHEREAS, the City of Sundown has ordered a special election on the question of whether to reauthorize a local street maintenance program, and such election was scheduled for May 2, 2020; and

WHEREAS, Section 41.0011 of the Texas Election Code provides that a special election may be held as an emergency election before the appropriate uniform election date if a political subdivision asks the Governor for permission to do so and the Governor determines that an emergency exists; and

WHEREAS, the City of Sundown desires to order a special election as an emergency election on the question of whether to reauthorize a local street maintenance program pursuant to Section 41.0011 of the Texas Election Code and. has asked the Governor for permission to hold such election prior to November 3, 2020; and

WHEREAS, an emergency exists under Section 41.0011 of the Texas Election Code due to the circumstances presented by the COVID-19 disaster and because the City of Sundown is not able to wait until November 3, 2020, to hold a special election on the question of whether to reauthorize a local street maintenance program; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Sections 41.007(d) and 41.008 of the Texas Election Code to the extent necessary to allow the City of Sundown to order its special election, to occur on July 14, 2020, as an emergency election on the question of whether to reauthorize a local street maintenance program pursuant to Section 41.0011(b) of the Texas Election Code. I further suspend Section 85.001(a) of the Texas Election Code to the extent necessary to allow early voting by personal appearance for the special election to begin not earlier than Monday, July 6, 2020, and to run concurrently with the early voting period for the runoff primary election.

The authority ordering the election under Section 3.004 of the Texas Election Code is the authority authorized to make the decision to postpone its election in accordance with this proclamation.

Early voting by personal appearance shall begin on Monday, July 6, 2020, in accordance with Section 85.001(d) of the Texas Election Code so that it runs concurrently with the early voting period for the runoff primary election.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 8th day of April , 2020.

Greg Abbott, Governor

TRD-202001400

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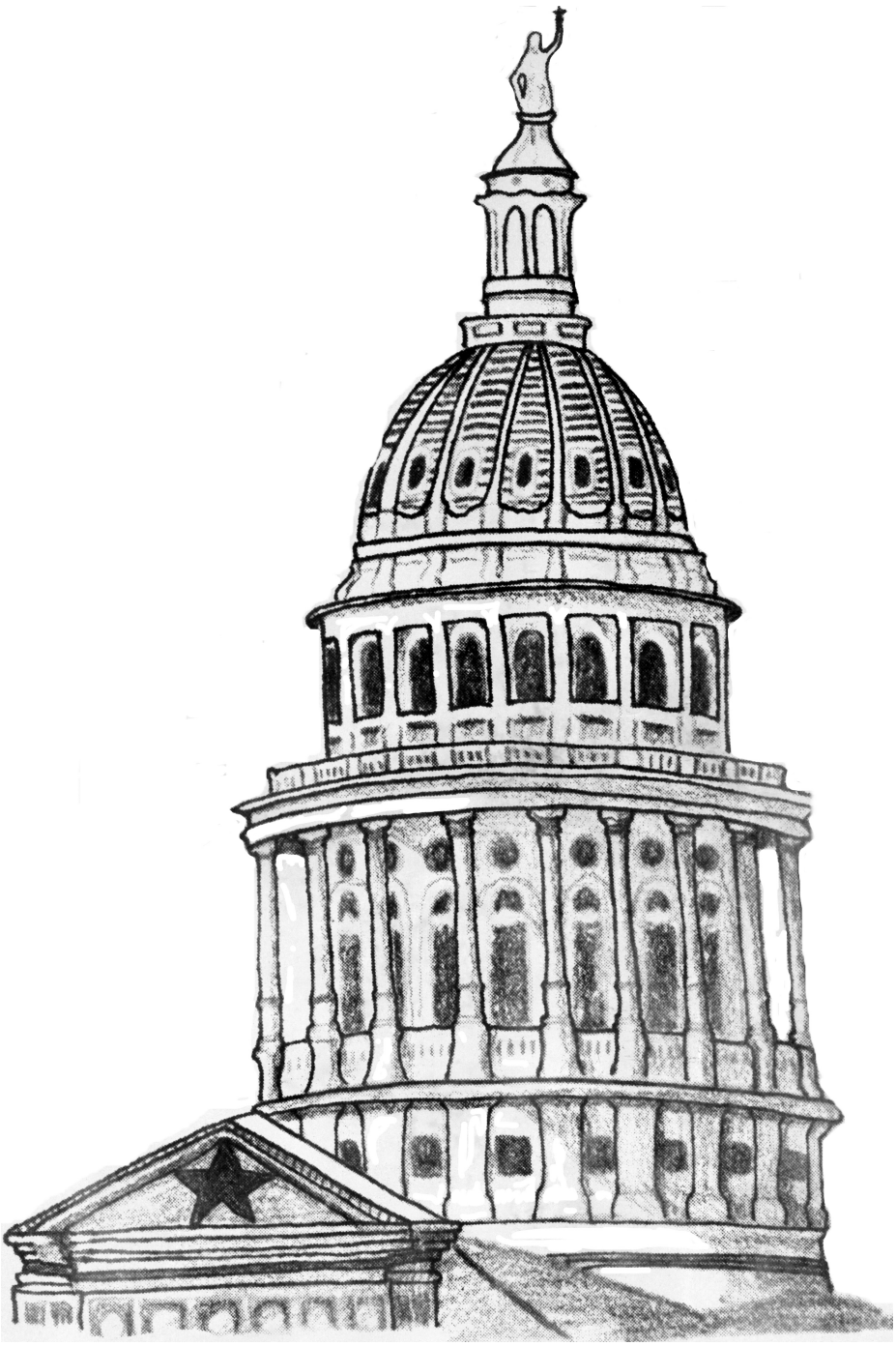


THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0342-KP

Requestor:

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Whether, when operating under a local disaster declaration, local governments may commandeer private property under Government Code 418.108 (RQ-0342-KP)

RQ-0343-KP

Requestor:

The Honorable Andrew Lucas

Somervell County Attorney

Post Office Box 1335

Glen Rose, Texas 76043

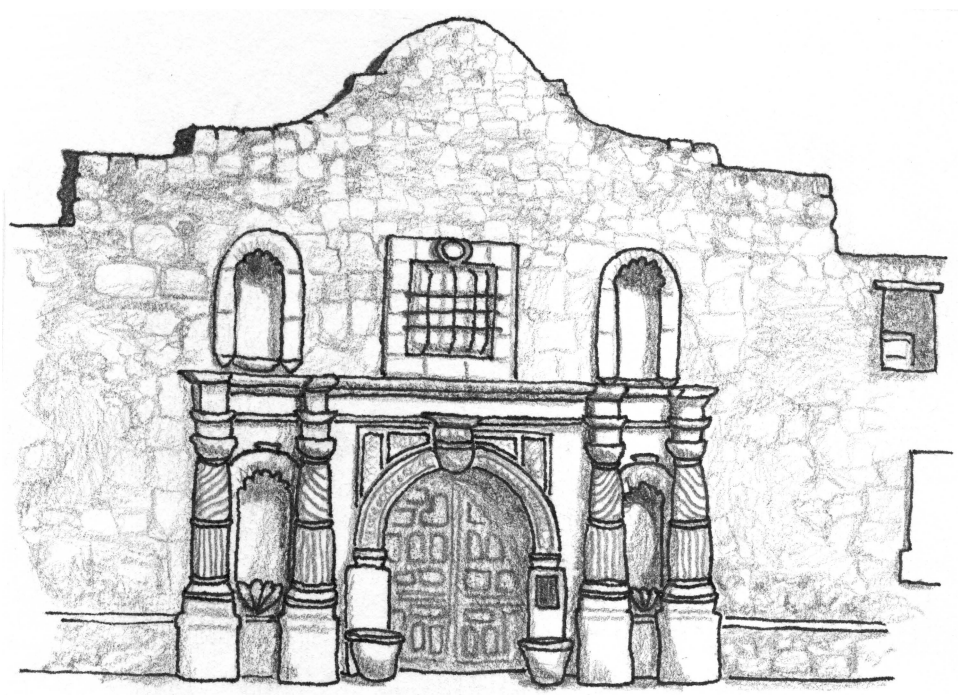
Re: Whether article 2, section 1 of the Texas Constitution, relating to the separation of powers, applies to municipal government and the management of personnel (RQ-0343-KP)

Briefs requested by May 4, 2020

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

TRD-202001375
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: April 7, 2020

♦ ♦ ♦



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 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.51

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25, Texas Administrative Code, Chapter 133 Hospital Licensing, new §133.51, concerning an emergency rule in response to COVID-19, in order to reduce the risk of transmission of COVID-19. As authorized by Government Code, §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code§2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Hospital Response to COVID-19.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a hospital and require screening of certain persons authorized to enter a hospital.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code, §2001.034 and §531.0055, and Health and Safety Code, §241.026. Government Code, §2001.034, authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code, §531.0055, authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code, §241.026, authorizes the Executive Commissioner of HHSC to adopt rules governing the development, establishment, and enforcement of standards for the construction, maintenance, and operation of licensed hospitals.

§133.51. Emergency Rule for Hospital Response to COVID-19.

(a) Based on state law and federal guidance, HHSC deems COVID-19 a health and safety risk to hospital patients, staff, and the public and requires a hospital to take the following measures. The screening required by this section does not apply to emergency services personnel entering the hospital in an emergency situation.

(b) A hospital must implement and enforce written policies and procedures in accordance with this section regarding the visitation rights of patients and setting forth any clinically necessary or reasonable restriction or limitation on such rights and the reasons for the clinical restriction or limitation.

(c) A hospital must implement and enforce written policies and procedures regarding the entry of its workforce to protect the health and safety of patients, employees and staff, and the public.

(d) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, other contract healthcare providers, persons providing a survivor of sexual assault with services required by Health and Safety Code Chapter 323, and a single designated caregiver acting on the patient's behalf.

(2) Persons with legal authority to enter include, but are not limited to, government personnel performing their official duties and an attorney or other legally authorized representative of a patient.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, a clergy member authorized by the hospital, one parent of a minor who is a patient, and family members and friends of a patient at the end of life or presenting at the emergency department, subject to the hospital's policies and procedures.

(e) A hospital must prohibit visitors, except as provided by subsection (f) of this section.

(f) A hospital may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated

information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(g) A hospital must not prohibit government personnel performing their official duty from entering the hospital, unless the individual meets the above screening criteria.

(h) If this emergency rule is more restrictive than any minimum standard relating to a hospital, this emergency rule will prevail so long as this emergency rule is in effect.

(i) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a hospital, the hospital must comply with the executive order or other direction.

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 April 3, 2020.

TRD-202001351
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: April 3, 2020
Expiration date: July 31, 2020
For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

SUBCHAPTER A. HOSPITALS

26 TAC §500.2

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 500, COVID-19 Emergency Health Care Facility Licensing, Subchapter A, Hospitals, new §500.2 Waiver of 36-Month Requirement in Response to COVID-19, concerning an emergency rule in response to COVID-19 to allow HHSC flexibility in implementation of an emergency rule adopted at 26 Texas Administrative Code, §500.1 related to off-site facility licensure. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for hospital off-site facilities in response to COVID-19.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC previously adopted an emergency rule to allow a currently licensed hospital to operate an off-site inpatient facility. To allow operation of additional off-site facilities, HHSC is adopting this emergency rule to allow licensed hospitals to request a waiver of the requirement that off-site facilities be open or licensed within the past 36 months, at the Commission's discretion.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §241.026. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §241.026 requires the Commission to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

§500.2. Waiver of 36-Month Requirement in Response to COVID-19. At its sole discretion, the Texas Health and Human Services Commission (HHSC) may waive the requirement that an off-site facility must have been licensed or open within the past 36 months under §500.1(b) of this title, if the hospital applying to use the off-site facility provides evidence satisfactory to HHSC that such waiver will not detrimentally affect the health or safety of patients, hospital staff, or the public.

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 April 4, 2020.

TRD-202001353
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 4, 2020
Expiration date: August 1, 2020
For further information, please call: (512) 834-4591

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SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES

26 TAC §500.20

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis new §500.20, ESRD Off-Site Facilities in Response to COVID-19, in Texas Administrative Code (TAC), Title 26, Chapter 500,

Subchapter B, concerning an emergency rule to allow end stage renal disease (ESRD) facilities to treat and train dialysis patients more effectively in response to COVID-19.

As authorized by Government Code §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the new emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state exists and requires immediate adoption of this new rule to ensure that dialysis patients receive safe treatment.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed ESRD to operate an off-site outpatient facility without obtaining a new license at: (1) an ESRD that is no longer licensed that closed within the past 36 months; (2) a mobile, transportable, or relocatable medical unit; (3) a physician's office; or (4) an ambulatory surgical center or freestanding emergency medical care facility that is no longer licensed that closed within the past 36 months.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §251.003 and §251.014. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Health and Safety Code §251.003 requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD. Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD. Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system.

§500.20. ESRD Off-Site Facilities in Response to COVID-19.

(a) An end stage renal disease (ESRD) facility licensed under Texas Health and Safety Code, Chapter 251 that meets the requirements of this emergency rule may use an off-site facility under its current license for added services or an increased number of stations to meet patient needs in response to COVID-19 for the duration this emergency rule is in effect or any extension of this emergency rule is in effect.

(b) The off-site facility must be:

(1) an ESRD facility no longer licensed under Texas Health and Safety Code, Chapter 251 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection, which:

(A) shall be capable of meeting the current licensing requirements at 25 TAC §117.32(a) - (e) (relating to Water Treatment, Dialysate Concentrates, and Reuse); or

(B) shall provide integrated hemodialysis machines, which incorporate water treatment and dialysis preparation and delivery into one system;

(2) a mobile, transportable, or relocatable medical unit utilizing integrated dialysis systems and defined as any trailer or self-propelled unit:

(A) equipped with a chassis on wheels;

(B) without a permanent foundation; and

(C) intended for provision of medical services on a temporary basis;

(3) a physician's office built after January 1, 2015, that is currently in use, which shall be used only for home training of COVID-19-negative dialysis patients;

(4) a physician's office built after January 1, 2015, that has closed within the past 12 months, which shall be used only for home training of COVID-19-negative dialysis patients and complies with the following:

(A) the office shall be well maintained with all building systems in good working condition; and

(B) manual fire extinguishers shall be provided in accordance with NFPA 10: Standard for Portable Fire Extinguishers;

(5) an ambulatory surgical center no longer licensed under Texas Health and Safety Code, Chapter 243 that closed within the past 36 months and will be used for either home training or providing in-center dialysis treatment where both of the following are met:

(A) the ESRD facility shall only provide integrated hemodialysis machines; and

(B) the building layout shall provide a direct view of all patient stations from a nurse's station; or

(6) a freestanding emergency medical care facility no longer licensed under Texas Health and Safety Code, Chapter 254 that closed within the past 36 months and will be used for either for home training services or providing in-center dialysis treatment where both of the following are met:

(A) the ESRD facility shall only provide integrated hemodialysis machines; and

(B) the building layout shall provide a direct view of all patient stations from a nurse's station.

(c) Prior to receiving approval to use an off-site facility under this emergency rule, the ESRD facility must submit to INFO-HFLC@hhsc.state.tx.us on a form provided by the Texas Health and Human Services Commission (HHSC):

(1) an application to use an off-site facility for the addition of services or increased number of stations; and

(2) water culture testing results that meet the requirements of 25 TAC §117.32(c)(4).

(d) HHSC has the discretion to approve or deny any application to use an off-site facility under this emergency rule. HHSC may

require an inspection of the off-site facility or additional documentation prior to considering an application.

(e) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for an ESRD to use the off-site facility under this emergency rule at any time. Any patients being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the ESRD's policies and procedures.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3161

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.48

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units, new §510.48, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Facility Response to COVID-19.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a facility and require screening of certain persons authorized to enter a facility.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §577.010. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §577.010 authorizes the Executive Commissioner of HHSC to adopt rules governing rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

§510.48. Emergency Rule for Facility Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission deems COVID-19 a health and safety risk to facility patients, staff, and the public and requires a facility to restrict entry to the facility.

(b) A facility must implement and enforce written policies and procedures in accordance with this section regarding the visitation rights of patients and setting forth any clinically necessary or reasonable restriction or limitation on such rights and the reasons for the clinical restriction or limitation.

(c) A facility must implement and enforce written policies and procedures regarding the entry of its workforce to protect the health and safety of patients, employees and staff, and the public.

(d) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, other contract healthcare providers, persons providing a survivor of sexual assault with services required by Health and Safety Code Chapter 323, a single designated caregiver acting on the patient's behalf, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure resident health and safety.

(2) Persons with legal authority to enter include, but are not limited to, government personnel performing their official duties and an attorney or other legally authorized representative of a patient.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, a clergy member authorized by the facility, one parent of a minor who is a patient, and family members and friends of a patient at the end of life, subject to the facility's policies and procedures.

(e) A facility must prohibit visitors, except as provided by subsection (f) of this section.

(f) A facility may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(g) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(h) If this emergency rule is more restrictive than any minimum standard relating to a facility, this emergency rule will prevail so long as this emergency rule is in effect.

(i) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a facility, the facility must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER C. GENERAL PROVISIONS

DIVISION 1. OPERATIONS AND SAFETY PROVISIONS

26 TAC §550.212

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 550, Licensing Standards for Prescribed Pediatric Extended Care Centers, Subchapter C, General Provisions, Division 1, Operations and Safety Provisions, new §550.212, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Prescribed Pediatric Extended Care Center Response to COVID-19.

To protect minors being served in a prescribed pediatric extended care center and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a prescribed pediatric extended care center and require screening of certain persons authorized to enter a prescribed pediatric extended care center.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §248A.101. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §248A.101 authorizes the Executive Commissioner of HHSC to adopt rules to implement Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

§550.212. Emergency Rule for Prescribed Pediatric Extended Care Center Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a prescribed pediatric extended care center to take the following measures. The screening required by this section does not apply to emergency services personnel entering the center in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, therapists, dieticians, social workers, and home health workers whose services are necessary to ensure minors' health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of Disability Rights Texas, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(c) A prescribed pediatric extended care center must take the temperature of every person upon arrival and may not allow a person with a fever to enter or remain in the center.

(d) A prescribed pediatric extended care center must prohibit visitors, except as provided in subsection (e) of this section.

(e) A prescribed pediatric extended care center may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a prescribed pediatric extended care center, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a prescribed pediatric extended care center, the prescribed pediatric extended care center must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER M. COVID-19 EMERGENCY RULE

26 TAC §551.401

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 551 Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Condition, new §551.401, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Intermediate Care Facility Response to COVID-19.

To protect residents of intermediate care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into an intermediate care facility and require screening of certain persons authorized to enter an intermediate care facility.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §252.001 and §252.008. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §252.008 authorizes the Executive Commissioner of HHSC to adopt rules administering and implementing Chapter 252 of the Health and Safety Code, concerning Intermediate Care Facilities for Individuals with an Intellectual Disability. Health and Safety Code §252.001 states that the purpose of Chapter 252 of the Health and Safety Code is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for individuals with an intellectual disability.

§551.401 Emergency Rule for Intermediate Care Facility Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires an intermediate care facility for individuals with an intellectual disability or related condition to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure resident health and safety.

(2) Persons with legal authority to enter include, but are not limited to law enforcement officers, representatives of Disability Rights Texas, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of residents at the end of life.

(c) A facility must take the temperature of every person upon arrival and must not allow a person with a fever to enter or remain in the facility, except as a resident.

(d) A facility must prohibit all visitors, except as provided in subsection (e) of this section.

(e) A facility may allow entry of persons providing critical assistance, unless the facility believes the person may impede the health and safety of residents or the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a facility, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a facility, the facility must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §553.45

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 553 Licensing Standards for Assisted Living Facilities, new §553.45, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Assisted Living Facility Response to COVID-19.

To protect residents of assisted living facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into an assisted living facility and require screening of certain persons authorized to enter an assisted living facility.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §247.025 and §247.026. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §247.025, authorizes the Executive Commissioner of HHSC to adopt rules governing the implementation of Chapter 247 of the Health and Safety Code, concerning Assisted Living Facilities. Health and Safety Code, §247.026, authorizes the Executive Commissioner of HHSC to adopt rules governing minimum standards to protect the health and safety of an assisted living facility resident.

§553.45. Emergency Rule for Assisted Living Facility Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires an assisted living facility to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, and home health and hospice workers, whose services are necessary to ensure resident health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of Disability Rights Texas, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of residents at the end of life.

(c) An assisted living facility must take the temperature of every person upon arrival and must not allow a person with a fever to enter or remain in the facility, except as a resident.

(d) An assisted living facility must prohibit visitors, except as provided in subsection (e) of this section.

(e) An assisted living facility may allow entry of persons providing critical assistance, unless the facility believes the person may impede the health and safety of residents or the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to an assisted living facility, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to an assisted living facility, the assisted living facility must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER D. ADDITIONAL STANDARDS SPECIFIC TO LICENSE CATEGORY AND SPECIFIC TO SPECIAL SERVICES

26 TAC §558.408

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 558 Licensing Standards for Home and Community Support Services Agencies, new §558.408, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for HCSSA Response to COVID-19.

To protect clients served by home and community support services agencies and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require screening of staff, clients, and household members and offer alternative methods to provide non-essential services.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §142.012. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules governing necessary to implement Chapter 142 of the Health and Safety Code, concerning, Home and Community Support Services. Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules governing minimum standards for home and commuity support services agencies that are necessary to protect the public.

§558.408. Emergency Rule for HCSSA Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health safety risk and requires a home and community support services agency to take the following measures. The screening required by this section does not apply to emergency services personnel entering an agency in an emergency situation.

(b) For the purposes of this section personal protective equipment means specialized clothing or equipment, worn by agency staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, gloves, and disposable gowns.

(c) Agency staff have legal authority to enter a facility licensed under Health and Safety Code Chapters 242, 247, or 252, or Human Resources Code Chapter 103, to provide services to the facility's resi-

dents who are agency clients. Agency staff entering a licensed facility must follow the infection control protocols of the facility.

(d) An agency must screen its staff and must not allow staff to remain in the agency or make home visits if the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(e) The agency must determine if a home visit requires essential or non-essential services.

(1) If the visit requires non-essential services, the visit:

(A) must be conducted by phone or video conference, if possible; or

(B) must be rescheduled for a later date.

(2) If the visit requires essential services, staff must conduct the visit in person and screen the client and household members using the same criteria for staff that is described in subsection (d) of this section and proceed as described below:

(A) If the client or a member of the household meet one or more of the screening criteria, use appropriate personal protective equipment during the visit.

(B) If the client or a member of the household does not meet one or more of the screening criteria, conduct the visit as indicated for the type of service provided.

(3) An agency must document any missed visits in the plan of care, care plan, or individualized services plan and notify the attending physician, if applicable.

(f) A parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse may make the monthly supervisory visit required for branch supervision by 26 TAC §558.321(d)(1) or as required for alternative delivery site by §558.322(c)(1) by virtual communication, such as video or telephone conferencing systems.

(g) A hospice RN may make the supervisory visit required in 26 TAC §558.842(d) by virtual communication, such as video or telephone conferencing systems.

(h) If this emergency rule is more restrictive than any minimum standard relating to a home and community support services agency, this emergency rule will prevail so long as this emergency rule is in effect.

(i) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a home and community support services agency, the home and community support services agency must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER H. STANDARDS SPECIFIC TO AGENCIES LICENSED TO PROVIDE HOSPICE SERVICES

DIVISION 7. HOSPICE INPATIENT UNITS

26 TAC §558.872

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 558, Licensing Standards for Home and Community Support Services Agencies, new §558.872, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Hospice Inpatient Unit Response to COVID-19.

To protect clients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into an inpatient hospice unit and require screening of certain persons authorized to enter an inpatient hospice unit.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §142.012. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code, §142.012

authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 of the Health and Safety Code, concerning, Home and Community Support Services. Health and Safety Code §142.012 authorizes the Executive Commissioner of HHSC to adopt rules establishing minimum standards for home and community support services agencies that are necessary to protect the public.

§558.872. Emergency Rule for Hospice Inpatient Unit Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a hospice inpatient unit to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, physicians, nurses, hospice aides, and spiritual counselors.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of residents of clients at the end of life.

(c) A facility must take the temperature of every person upon arrival and must not allow a person with a fever to enter or remain in the facility, except as a client.

(d) A hospice inpatient unit must prohibit all visitors, except as provided in subsection (e) of this section.

(e) A hospice inpatient unit may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(f) A parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse may make the monthly supervisory visit required for an alternative delivery site by §558.322(c)(1) of this chapter (relating to Standards for Alternate Delivery Sites) by virtual communication, such as video or telephone conferencing systems.

(g) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(h) If this emergency rule is more restrictive than any minimum standard relating to a hospice inpatient unit, this emergency rule will prevail so long as this emergency rule is in effect.

(i) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a hospice inpatient unit, the hospice inpatient unit must comply with the executive order or other direction.

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 April 3, 2020.

TRD-202001346
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 3, 2020
Expiration date: July 31, 2020
For further information, please call:

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 35. EMERGENCY RULES

SUBCHAPTER A. COVID-19 EMERGENCY RULES

28 TAC §35.3

The Commissioner of Insurance adopts new 28 TAC §35.3, concerning windstorm building codes for structures insured by the Texas Windstorm Insurance Association (TWIA), on an emergency basis, effective immediately. The emergency adoption is necessary to limit the effect of the COVID 19 pandemic on construction along the Texas coast.

REASONED JUSTIFICATION. On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to the COVID-19 pandemic. As part of the declaration, Governor Abbott authorized the use of all available resources of state government that are reasonably necessary to cope with the disaster.

The Commissioner recently adopted new 28 TAC §5.4012 and amendments to §§5.4011, 5.4601, 5.4603, 5.4621, 5.4622, and 5.4642. These sections adopted the wind provisions in the 2018 *International Building Code (IBC)* and *International Residential Code (IRC)* as the standards for insurability through TWIA. The 2018 *IBC* and *IRC* were to apply to structures constructed, repaired, or to which additions are made on or after April 1, 2020.

But because the global pandemic is disrupting supply chains and manufacturing operations around the world, compliance with the new building codes may not be possible without delaying construction on the Texas coast. The supply chain and manufacturing disruptions are already making it difficult to obtain construction materials. Requirements for complying with the 2018 *IBC* and *IRC* vary according to each structure. However, because the new building codes require greater windstorm resistance than the current codes, compliance often requires more materials than the current codes require for the same structure. In some cases, compliance with the 2018 *IBC* and *IRC* also requires different building materials.

An emergency rule is necessary

Pursuant to Government Code §2001.034 and §2001.036(a)(2), the new rule is adopted on an emergency basis and with an immediate effective date because an imminent peril to the pub-

lic health, safety, or welfare requires adoption on fewer than 30 days' notice.

Residential and commercial construction are considered critical infrastructure sectors by the National Cybersecurity and Infrastructure Agency. The sector's importance is underscored by the fact that the Department of Homeland Security (DHS) categorizes workers supporting the construction of housing as an Essential Critical Infrastructure Workforce. In Executive Order No. GA-14, issued March 31, 2020, Governor Abbott adopted the DHS's guidelines on the Essential Critical Infrastructure Workforce. The new rule is adopted to ensure that supply chain and manufacturing problems arising from the pandemic do not interfere with this essential function. Therefore, it is vital to the public health and welfare that the new rule goes into effect immediately.

Under Government Code §2001.034, this emergency rule may not be in effect for longer than 180 days.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Insurance Code §§2210.008, 2210.251, 2210.2515, 2210.252, and 36.001; and Government Code §2001.034 and §2001.036(a)(2).

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Insurance Code Chapter 2210.

Insurance Code §2210.251(b) states that for geographic areas specified by the Commissioner, the Commissioner must adopt by rule the 2003 International Residential Code and may adopt subsequent editions of that code and amendments to that code.

Insurance Code §2210.2515 gives TDI the authority to prescribe forms on which a person may apply for a certificate of compliance.

Insurance Code §2210.252 provides that the Commissioner by rule may adopt an edition of the International Residential Code and a supplement published by the International Code Council or an amendment to that code.

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

Government Code §2001.034 provides that 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 requires adoption of a rule on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

§35.3. Effective date of 2018 International Building Code and 2018 International Residential Code.

(a) Notwithstanding §§5.4011, 5.4012, 5.4601, 5.4603, 5.4621, 5.4622, and 5.4642 of this title, the 2018 International Building Code and the 2018 International Residential Code will apply to structures constructed, repaired, or to which additions are made on or after September 1, 2020. The 2006 International Building Code and International Residential Code with Texas Revisions will apply to structures constructed, repaired, or to which additions are made on or after January 1, 2008, and before September 1, 2020.

(b) This section may not be construed as preventing structures constructed, repaired, or to which additions are made on or after April 1, 2020, but before September 1, 2020, from being built in compliance with the 2018 International Building Code and the 2018 International Residential Code.

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 April 3, 2020.

TRD-202001334
James Person
General Counsel
Texas Department of Insurance
Effective date: April 3, 2020
Expiration date: July 31, 2020
For further information, please call: (512) 676-6584

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER CC. COVID-19 EMERGENCY RULE

40 TAC §19.2801

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new Subchapter CC, COVID-19 Emergency Rule, §19.2801, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of

the state requires immediate adoption of this Emergency Rule for Facility Response to COVID-19.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a nursing facility and require screening of certain persons authorized to enter a nursing facility.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §242.001 and §242.037. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §242.037 authorizes the Executive Commissioner of HHSC to adopt rules to implement Chapter 242 of the Health and Safety Code including making and enforcing minimum standards for quality of care and quality of life of nursing facility residents. Health and Safety Code §242.001 provides that the goal of Chapter 242 is to ensure that nursing facilities deliver the highest possible quality of care.

§19.2801. Emergency Rule for Nursing Facility Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a nursing facility to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, hospice workers, and individuals operating under the authority of a local intellectual and developmental disability authority (LIDDA) or a local mental health authority (LMHA) whose services are necessary to ensure resident health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services, persons with legal authority to enter, and family members or friends of residents at the end of life.

(c) A nursing facility must take the temperature of every person upon arrival and must not allow a person with a fever to enter or remain in the nursing facility, except as a resident.

(d) A nursing facility must prohibit visitors, except as provided in subsection (e) of this section.

(e) A nursing facility may allow entry of persons providing critical assistance, unless the nursing facility believes the person may impede the health and safety of residents or the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(f) A nursing facility must not prohibit government personnel performing their official duty from entering the nursing facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a nursing facility, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a nursing facility, the nursing facility must comply with the executive order or other direction.

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.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3161

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CHAPTER 98. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS
SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

40 TAC §98.65

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 98 Day Activity and Health Services Requirements, new §98.65, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and di-

rected that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Day Activity and Health Services Response to COVID-19.

To protect day activity and health services clients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to restrict entry into a day and health services facility and require screening of certain persons authorized to enter a day and health services facility.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Human Resources Code §103.004 and §103.005. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Human Resources Code §103.004, authorizes the Executive Commissioner of HHSC to adopt rules implementing Chapter 103 of the Human Resources Code, concerning Day Activity and Health Services Facilities. Human Resources Code §103.005 authorizes the Executive Commissioner of HHSC to adopt rules governing the standards for safety and sanitation of a licensed day activity and health services facility.

§98.65. Emergency Rule for Day Activity and Health Services Response to COVID-19.

(a) Based on state law and federal guidance, HHSC finds COVID-19 to be a health and safety risk and requires a day activity and health services facility to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, and home health workers whose services are necessary to ensure client health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services and persons with legal authority to enter.

(c) A day activity and health services facility must take the temperature of every person upon arrival and must not allow a person with a fever to enter or remain in the facility.

(d) A day activity and health services facility must prohibit visitors, except as provided in subsection (e) of this section.

(e) A day activity and health services facility may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) Contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness; or

(3) International travel within the last 14 days to countries with ongoing community transmission. For updated information on affected countries visit: https://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notices.html.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a day activity and health services facility, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a day activity and health services facility, the day activity and health services facility must comply with the executive order or other direction.

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.

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TRD-202001347
Karen Ray
Chief Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3161


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 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.13

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.13, concerning Commercial Licenses and Permits (Fishing). The proposed amendment would establish the fees for cultivated oyster mariculture permits issued under the provisions of Parks and Wildlife Code, Chapter 75. The proposed amendment also would correct a grammatical disagreement in the title of the section.

The fee requirement for cultivated oyster mariculture permits would be imposed by another proposed rulemaking published elsewhere in this issue. As a convenience, the department includes an explanation in both proposed rulemakings to explain the department's methodology for determining the fee amounts. The application fee for a permit issued under the proposed new subchapter would be $200, which represents the cost to the department of the time for a biologist to evaluate a prospective project. The proposed annual fee for a COMP is $450 per acre per year (except for COMPs located on private property), which is the estimated cost to the department for conducting an annual facility inspection, which is an NSSP requirement. This value was derived by calculating the payroll, vehicle, boat, and travel values for two department technicians to travel to a site, launch a boat, and conduct an inspection. By statute (Parks and Wildlife Code, §75.0105) the department is required to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, the proposed fees incorporate 20 percent of the department's inspection expense, rounding up to the nearest $50, which yields a permit fee of $450. The annual fee for a COMP located on private property would be the same as for a nursery facility, because of similar costs to the department for inspections.

The proposed annual fee for a nursery permit would be $170 per acre per year, which is the estimated cost to the department for conducting an annual facility inspection, which is required by the NSSP. This value was derived by calculating the payroll, vehicle, boat, and travel values for one department technician to travel to a site and conduct an inspection. As noted previously, the department is required by statute (Parks and Wildlife Code, §75.0105) to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, taking 20 percent of the department's inspection expense, rounded up to the nearest $10 increment, yields a permit fee of $170. In addition, if the nursery facility is located on public water, an additional fee of $0.023 per square foot per year will be assessed, which represents a proportionally equivalent value of a COMP for the use of public water.

Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years that the amendment is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules. The fees imposed by the proposed new rule will recover the agency's cost of routine administration and enforcement.

Mr. Riechers also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the discharge of the legislature's direction under Parks and Wildlife Code, §75.0103(a) to establish a program governing cultivated oyster mariculture and the discharge of the agency's general duty to protect and conserve the aquatic resources of the state and provide for water safety.

There will be adverse economic effects on persons required to comply with the rule as proposed, consisting of the costs to prepare the operational plan and natural resource survey required by the rules; fees; costs for gear tags; and the cost of the public notice required by the rules. The estimated maximum probable annual economic costs for persons operating a COMP are $2,050 for the first year ($200 for the permit application, $450 per acre per year; approximately $200 for gear tags; $500 for the Operation Plan; $500 for the natural resource survey; and $200 for the public notice) and $450 each year thereafter ($450 per acre per year). This amount would be less for a COMP located on private property, since the per-acre fee for use of public water would not apply. The probable annual economic costs for a person operating a nursery facility are estimated to be $370 for the first year ($200 for the initial application and $170 per year plus $0.023 per square foot).

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only

consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that no small businesses, micro-business, or rural communities will be affected by the proposed new rules. House Bill 1300 created the legal basis for the regulation of cultivated oyster mariculture operations in Texas; therefore, no person is presently engaged in the practice, which means the proposed new rules cannot impact any small businesses, micro-businesses, or rural community. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of any fee, by codifying application and facility fees; not create a new regulation; expand an existing regulation (by adding fee amounts for cultivated oyster mariculture permits), but would not otherwise limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Lance Robinson at (512) 389-4649, e-mail: lance.robinson@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0104, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed amendment affects Parks and Wildlife Code, Chapter 75.

§53.13. Business Licenses [~~License~~] and Permits (Fishing).

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

(d) Cultivated Oyster Mariculture Fees.

(1) Application fee--$200.

(2) Cultivated Oyster Mariculture Permit (COMP).

(A) For a COMP located in public water--$450 per acre per year.

(B) For a COMP located on private property--$170 per acre per year.

(3) Cultivated Oyster Mariculture Permit - Nursery Only (nursery permit)--$170 per acre per year, $0.023 per square foot per year, if the nursery facility is located in public water.

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

Filed with the Office of the Secretary of State on April 6, 2020.

TRD-202001356
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 389-4775

31 TAC §53.15

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.15, concerning Miscellaneous Wildlife and Fisheries Licenses and Permits.

The proposed amendment would change the name of the current broodfish permit, renaming it the broodstock permit to reflect the scope of new rules to establish the cultivated oyster mariculture program.

Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years that the amendment is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Riechers also has determined that for each of the first five years that the rule as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be accurate regulatory references.

There will be no adverse economic effects on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely af-

fect market competition; or require the purchase or modification of equipment or services.

The department has determined that no small businesses, micro-business, or rural communities will be affected by the proposed new rule. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will not create a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will not create a new regulation; not expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy, although the creation of the cultivated oyster mariculture program has the possibility of creating a new industry in the state.

Comments on the proposal may be submitted to Lance Robinson at (512) 389-4649, e-mail: lance.robinson@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75.

The proposed amendment affects Parks and Wildlife Code, Chapter 75.

§53.15. Miscellaneous Wildlife and Fisheries Licenses and Permits.

(a) - (g) (No change.)

(h) Miscellaneous fees:

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

(3) broodstock [~~broodfish~~] permit application--$25;

(4) - (8) (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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Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
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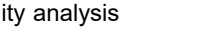

CHAPTER 57. FISHERIES

SUBCHAPTER F. COLLECTION OF BROODSTOCK [~~BROODFISH~~] FROM TEXAS WATERS

31 TAC §§57.391, 57.392, 57.394 - 57.398, 57.400, 57.401

The Texas Parks and Wildlife Department proposes amendments to §§57.391, 57.392, 57.394 - 57.398, 57.400, and 57.401, concerning Collection of Broodfish from Texas Waters. The proposed amendments would conform the language of the subchapter to accommodate the creation of the cultivated oyster mariculture program under the provisions of proposed new Chapter 58, Subchapter E, which is published elsewhere in this issue. Because the proposed new rules in Chapter 58 would allow the use of native oysters to propagate oysters for cultivated oyster mariculture, the provisions of Chapter 57, Subchapter F (and the title of the subchapter) need to be changed, as the term "broodfish" as currently defined does not include oysters. Therefore, the proposed amendments would replace the term "broodfish" with the term "broodstock" throughout the subchapter and refer where appropriate to "aquatic species" rather than "fish." Similarly, archaic references to "these rules" would be replaced by references to "this subchapter." Any proposed amendment not specifically addressed in this preamble is a nonsubstantive, housekeeping type change to modernize and clarify rule language to enhance readability, enforcement, administration, and compliance.

The proposed amendment to §57.391, concerning Definitions, would alter paragraph (1) to remove an irrelevant reference to private facilities. The proposed amendment would alter paragraph (2) to remove an unnecessary reference to the Agriculture Code. The proposed amendment to paragraph (4) would add the term "mariculture" to the definition of "broodstock." The proposed amendment would add new paragraph (10) to define "mariculture" as having the meaning assigned by Parks and Wildlife Code, Chapter 75. The proposed amendment to paragraph (11) would alter the definition of "progeny" to include oyster larvae, seed, and spat.

The proposed amendment to §57.392, concerning General Rules, would nonsubstantively rephrase subsection (a) for clarity.

The proposed amendment to §57.395, concerning Broodstock Collection; Notification, would add a reference to Parks and Wildlife Code, Chapter 75 to the list of predicate violations for which the department will not issue a permit, which is necessary to accommodate violations relating to cultivate oyster mariculture permits.

The proposed amendment to §57.397, concerning Broodfish Permit; Revocation, would retitle the section "Prohibited Acts" and remove references to revocation. Parks and Wildlife Code, Chapter 12, provides a statutory process for the revocation of any license or permit; it is therefore unnecessary for revocation procedures to be established by rule. The proposed amendment

would also generate categories of conduct that would constitute offenses under the subchapter rather than enumerate specific acts.

Lance Robinson, Deputy Director for Coastal Fisheries, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Robinson also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the ability of persons to collect oyster larvae and seed from the wild for the cultivation of oysters in captivity, which could relieve pressure on wild oyster populations.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and micro-businesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not result in negative economic impacts to small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The ruled as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; expand an existing regulation (by making the provisions applicable to cultivated oyster mariculture); could increase but not decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Lance Robinson at (512) 389-4649, e-mail: lance.robinson@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendments are proposed under the authority of Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for the issuance of a permit under Parks and Wildlife Code, Chapter 43, Subchapter P.

The amendments affect Parks and Wildlife Code, Chapter 43, Subchapter P.

§57.391. Definitions.

The following words and terms, when used in this subchapter [~~these rules~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aquaculture (or fish farming)--The business of producing and selling cultured aquatic species [~~raised in private facilities~~].

(2) Aquaculturist--A person authorized by law [~~holding a valid license, issued under the Agriculture Code, Chapter 134,~~] to engage in aquaculture, fish farming or mariculture.

(3) (No change.)

(4) Broodstock [~~Broodfish~~]--An aquatic species [~~A fish~~] taken from the public waters of this state for the purpose of aquaculture or mariculture.

(5) Collection--Any boating, fishing, or aquatic product [~~fish~~] transportation activity involved in the take or attempted take of broodstock [~~broodfish~~].

(6) - (9) (No change.)

(10) Mariculture--Cultivated oyster mariculture as defined by Parks and Wildlife Code, Chapter 75.

(11) [~~(10)~~] Progeny--Offspring of aquatic species [~~fish~~], including eggs, fry, [~~and~~] fingerlings, oyster larvae, seed, and spat.

(12) [~~(11)~~] Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(13) [~~(12)~~] Recreational Fishing--The act of using legal means or methods to take or to attempt to take aquatic life for noncommercial purposes from the public waters of this state.

§57.392. General Rules.

(a) No person may collect or possess broodstock in public waters unless the person is in physical possession of:

(1) a valid broodstock permit issued by the department; and

(2) a valid recreational fishing license issued by the department.

[~~(a) While collecting, an aquaculturist or designated agent must be in possession of a valid recreational fishing license in all public waters and broodfish permit issued by the department.~~]

(b) (No change.)

§57.394. Broodstock [~~Broodfish~~] Collection; Notification.

The department's nearest coastal or inland regional fisheries office and law enforcement office must be notified no less than 48 hours prior to commencement of broodstock [~~broodfish~~] collection.

§57.395. Broodstock [~~Broodfish~~] Permits; Fees, Terms of Issuance.

(a) The department shall not issue a permit under this subchapter to any person who has [~~The director may issue broodfish permits only to an aquaculturist who has not violated~~], during the one-year period preceding the date of application, been convicted for a violation of any provision of this subchapter, provisions of a permit issued under this subchapter, or [~~any provision of these rules or rules promulgated under~~]:

(1) the Parks and Wildlife Code, Chapter 66 or Chapter 75; or

(2) the Agriculture Code, Chapter 134.

(b) The permit shall prescribe:

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

(3) number and total length of aquatic species [~~fish~~] collected; and

(4) (No change.)

(c) Broodstock [~~broodfish~~] permits will not be issued for the collection of black bass of the genus Micropterus or crappie of the genus Pomoxis.

(d) The fee for broodstock [~~broodfish~~] permit application shall be specified in Chapter 53 of this title (relating to Finance) and is not refundable if a permit is denied.

(e) To be considered for a broodstock [~~broodfish~~] permit, the applicant shall:

(1) complete and submit a broodstock [~~broodfish~~] permit application on a form provided by the department;

(2) (No change.)

(f) An applicant for a broodstock [~~broodfish~~] permit or a permittee shall allow inspection of the [~~their~~] aquaculture or mariculture facility for which the permit is sought or has been issued by authorized employees of the department during normal business hours.

(g) No person may return broodstock collected under this subchapter to public waters unless authorized to do so under [~~If a permittee discontinues aquaculture activities, broodfish collected under permit from the department may be returned to public waters of the state only by permit as required by the~~] Parks and Wildlife Code, §66.015.

§57.396. Broodstock [~~broodfish~~] Permit; Expiration.

(a) Broodstock [~~broodfish~~] permits [~~required by these rules~~] expire 60 days from the date of issuance.

(b) Broodstock [~~broodfish~~] permits are not transferable.

§57.397. Prohibited Acts [~~Broodfish Permit; Revocation~~].

It is an offense for any person to: [~~The department may revoke a broodfish permit upon finding that a permittee or his agent:~~]

(1) violate a provision of this subchapter; [~~does not hold a valid aquaculture (fish farming) license issued by the Texas Department of Agriculture;~~]

(2) violate a provision of a permit issued under this subchapter [~~does not hold a valid recreational fishing license while collecting in all public waters of this state;~~]

(3) fail to comply with the reporting requirements of this subchapter [~~has violated any provision of that broodfish permit;~~]

[~~(4) fails to report, as required in §57.401 of this title (relating to Reports), the number and sizes of broodfish collected~~];

(4) [~~(5)~~] provide [~~provides~~] false information in a [~~broodfish~~] report required under this subchapter; or

(5) [~~(6)~~] fail [~~fails~~] to remit to the department [~~within 30 days of broodfish collection~~] all restitution fees assessed by the department within 14 days of assessment [~~to the permittee for recovery of the value of broodfish collected~~].

§57.398. Permit Denial.

A broodstock [~~broodfish~~] permit may be denied if:

(1) the applicant fails to satisfy all required criteria for permit issuance required by this subchapter [~~listed in §57.392(a) of this title (relating to General Rules) and §57.395(a)-(c) of this title (relating to Broodstock Permits; Fees, Terms of Issuance)~~];

(2) the department finds that the prospective collection activities [~~of broodfish~~] could be detrimental to existing [~~fish~~] populations of aquatic species at a specified collection site;

(3) - (4) (No change.)

(5) the [~~fish~~] species and numbers requested in the permit application are reasonably available from commercial aquaculturists licensed to operate aquaculture facilities within the state; or

(6) a designated agent named in the broodstock [~~broodfish~~] permit application has violated any provision of this subchapter [~~any of these rules~~] in the five-year period preceding the date of permit application.

§57.400. Reports.

A person holding a permit issued under this subchapter shall [~~The broodfish permit holder must~~] submit a [~~broodfish~~] collection report to the department within seven days of any collection activity conducted under a permit issued under this subchapter [~~broodfish collection~~]. The report shall be [~~submitted~~] on a form provided by the department.

§57.401. Restitution [~~for broodfish~~].

The department shall calculate the restitution value of aquatic species taken under a permit issued under this subchapter and assess the permit holder for that value. A permit holder shall pay the restitution value within 14 days of being notified by the department. [~~The Parks and Wildlife Code, §43.554, authorizes the department to set fees equal to the value of the broodfish to be taken under authority of that subchapter. The value of fish taken from the public waters of Texas is prescribed by rule in §§69.20-69.30 of this title (relating to Fish and Wildlife Values). Upon receipt of a broodfish collection report, the department shall provide the permittee with a restitution request in an amount equal to the established value of any and all fish collected. Permittee shall remit to the department the full restitution value of all broodfish taken within 14 days of receipt of restitution request from the department.~~]

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

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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

31 TAC §§58.350 - 58.361

The Texas Parks and Wildlife Department (the department) proposes new §§58.350 - 58.361, concerning Cultivated Oyster Mariculture. The new sections would be located in new Subchapter E, Cultivated Oyster Mariculture.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which amended the Parks and Wildlife Code by adding Chapter 75. Chapter 75 delegated to the Parks and Wildlife Commission authority to regulate cultivated oyster mariculture, which is the process of growing oysters in captivity. The proposed new rules would establish two types of cultured oyster mariculture permits and the general provisions governing permit privileges and obligations, as well as provisions governing administrative processes such as permit application, issuance, renewal, amendment, and denial, and reporting and recordkeeping requirements.

Proposed new §58.350, concerning Applicability, would establish the new subchapter as the primary administrative law governing cultivated oyster mariculture in this state and would further stipulate that no provision of the new subchapter is to be construed as to relieve any person of the need to comply with any other applicable provision of federal, state, or local laws.

Proposed new §58.351, concerning Application of Shellfish Sanitation Rules of Department of State Health Services, would require all activities conducted under the subchapter to be compliant with relevant provisions of the rules of the Department of State Health Services (DSHS). The regulation of shellfish sanitation in Texas is shared between the Parks and Wildlife Department and the Department of State Health Services. As a matter of expedience, the proposed new rules reference the applicable rules of DSHS rather than duplicate them, which has the additional benefit of preventing unintended regulatory conflict.

Proposed new §58.352, concerning Definitions, establishes the meaning of words and terms for purposes of compliance, administration, and enforcement.

Proposed new §58.352(1) would define "administratively complete" as "an application for a permit or permit renewal that contains all information requested by the department, as indicated on the application form, without omissions." The definition is necessary to establish the threshold condition that the department considers to be acceptable before committing department time and resources to evaluation and analysis of a prospective project. The permitting process for cultivated oyster mariculture permits involves several different state and federal jurisdictions and the department believes the appropriate starting point for the evaluation of such projects is when all pertinent information (as indicated on the permit application) has been submitted.

Proposed new §58.352(2) would define "container" as "any bag, sack, box, crate, tray, conveyance, or receptacle used to hold, store, or transport oysters possessed under a permit issued under this subchapter." One of the most important challenges facing the department with respect to the proposed new rules is that of keeping farmed oysters separate from wild oysters, in order to prevent potential resource depletion on public oyster reefs by providing an opportunity or incentives for undersized oysters to be removed from those reefs. To that end, the proposed new rules would require farmed oysters to be accompanied by a transport document when possessed outside a regulated facility, which in turn necessitates a definition for the manner in which oysters are packed and shipped for transport.

Proposed new §58.352(3) would define "cultured oyster mariculture facility (facility)" as "any building, cage, or other infrastructure within a permitted area." The definition is necessary to distinguish those places to which the rules apply.

Proposed new §58.352(4) would define "gear tag" as "a tag composed of material as durable as the device to which it is attached." The definition is necessary because the proposed rules require infrastructure components of cultivated oyster mariculture facilities to be equipped with gear tags to facilitate cleanup activities after strong storm and tides, which can move such things great distances.

Proposed new §58.352(5) would define "infrastructure" as "a building, platform, dock, vessel, cage, nursery structure, or any other apparatus or equipment within a permitted area." The definition is necessary to designate a single term for the various physical components of a facility.

Proposed new §58.352(6) would define "larvae" as "the free-swimming, planktonic life stage of an oyster." The definition is necessary because the proposed new rules create legal distinctions between oysters on the basis of shell length, but also allow for oyster hatcheries, which typically produce oyster larvae. The proposed new rules establish two categories of cultivated oyster mariculture permits, one of which (the nursery-only permit) applies to facilities in which oysters are obtained as larvae and grown to a size at which they can be moved to a farm (oyster seed) to be grown to legal harvest size; thus, it is necessary to make the distinction between the early life stages of oysters and the later life stages, which would be regulated in different types of facilities under separate permit categories.

Proposed new §58.352(7) would define "National Shellfish Sanitation Program (NSSP)" as "the cooperative program administered by the United States Food and Drug Administration (USFDA) for the sanitary control of shellfish produced and sold for human consumption in the United States and adopted by rule of the Department of State Health Services." The definition is necessary because in order to market oysters outside the state of Texas, the state of Texas must be compliant with the federal program for oyster sanitation. The proposed new rules would require compliance with NSSP standards governing the tagging of oysters and because the NSSP has already been adopted by reference by DSHS, it is expedient for the department simply to refer to DSHS rules rather than reproduce NSSP standards in the proposed new rules.

Proposed new §58.352(8) would define "nursery structure" as "a tank or chamber or system of tanks or chambers or other, similar devices in which a cultivated oyster is grown." The definition is necessary because the proposed new rules establish two categories of cultivated oyster mariculture permits, one of which (the nursery-only permit) applies to facilities in which oysters are obtained as larvae and grown to a size at which they can be moved to a farm (oyster seed) to be grown to legal harvest size. Therefore, the proposed new rules require a legal definition for the structures where larval oysters are held and cultured.

Proposed new §58.352(9) would define "oyster seed" as "shellstock of less than legal size." The definition is necessary to distinguish oysters that are not larval but not large enough to harvest.

Proposed new §58.352(10) would define "permitted area" as "the geophysical and/or geographical area identified in a permit where cultivated oyster mariculture activities are authorized." The term is necessary in order to avoid the repetition of cumbersome phraseology when referring to spatial parameters within which cultivated oyster mariculture is authorized under a permit.

Proposed new §58.352(11) would define "Permit Identifier (permit ID)" as "a unique alphanumeric identifier issued by the department to a permittee holding a Cultivated Oyster Mariculture permit." The definition is necessary because the department will issue each permittee an alphanumeric string that serves to uniquely identify a specific area where cultivated oyster mariculture activities are authorized to take place and which must be attached to various tags, labels, and equipment.

Proposed new §58.352(12) would define "permittee" as "a person who holds a permit issued under this subchapter." The definition is necessary to ensure that the term is not misunderstood to refer to any other permit or permits besides the cultivated oyster mariculture permits.

Proposed new §58.352(13) would define "Prohibited Area" as having the meaning defined by Texas Health and Safety Code, §436.002(27). The definition is necessary for purposes of establishing conditions under which oysters grown under a cultivated oyster permit must be depurated.

Proposed new §58.352(14) would define "Restricted Area" as having the meaning defined by Texas Health and Safety Code, §436.002(30). The definition is necessary for purposes of establishing conditions under which oysters grown under a cultivated oyster permit must be depurated.

Proposed new §58.352(15) would define "restricted visibility" as "any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorm, sandstorms, or any other similar causes." The definition is necessary to establish a reasonable standard for the visual markers delineating a permitted area.

Proposed new §58.352(16) would define "shellstock (stock)" as "live eastern oysters (*Crassotrea virginica*) in the shell." The definition establishes the taxonomic identity of the only species of oyster the proposed rules would allow to be grown under a cultivated oyster mariculture permit.

Proposed new §58.352(17) would define "wild-caught oyster" as "an oyster harvested from natural oyster beds." The definition establishes the distinction between oysters harvested from cultivated oyster mariculture facilities and any other oyster.

Proposed new §58.353, concerning General Provisions, consists of several actions, all of which have general applicability to the provisions of the new subchapter.

Proposed new subsection (a) would prohibit any person from engaging in cultivated oyster mariculture unless the person either possesses a permit for the activity or is acting as a subpermittee. The department wishes to make it abundantly clear that it is unlawful to engage in oyster cultivation in Texas without the appropriate authorization from the department.

Proposed new subsection (b) would set forth the privileges of a Cultivated Oyster Mariculture Permit (COMP), namely, to purchase, receive, grow, and sell cultivated oysters.

Proposed new subsection (c) would set forth the privileges of a Cultivated Oyster Mariculture Permit - Nursery Only (nursery permit), namely, to purchase, receive, and grow oyster seed and larvae, and sell oyster seed to a COMP permittee.

Proposed new subsection (d) would prohibit the conduct of permit activities at any place other than the locations specified by the permit. An activity conducted under a permit issued for a specific location should be conducted only at the specified location; therefore, the proposed new rules would stipulate that requirement.

Proposed new subsection (e) would establish that permits issued under the proposed new subchapter would be valid for 10 years. The 10-year period was selected because it takes several years for mariculture operations to reach optimum production capacity and they are susceptible to a variety of environmental factors that can affect operations. A 10-year period of validity allows for the continuity necessary to sustain operations.

Proposed new subsection (f) would require COMP permittees to plant at least 100,000 oyster seed per acre on an annual basis, unless otherwise specifically authorized in writing by the department. Because there is a finite amount of bay bottom that would be suitable for cultivated oyster mariculture within the matrix of biological and other parameters, the department reasons that it is prudent to require persons who obtain a cultivated oyster mariculture permit to actually engage in the practice of cultivated oyster mariculture. Otherwise, that opportunity is denied to someone else.

Proposed new subsection (g) would restrict cultivated oyster mariculture to seed and larvae from native Eastern oyster broodstock collected in Texas waters and propagated in a hatchery located in Texas unless otherwise specifically authorized by the department in writing, including the importation, with a time constraint of December 31, 2027, of triploid oysters, tetraploid oyster seed, oyster larvae, and or oyster semen/eggs (germplasm) produced in permitted out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state and/or oyster seed, oyster larvae, and oyster semen/eggs (germplasm) produced from Texas broodstock at out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state. The department's mission is to protect and conserve the fish and wildlife resources of Texas. For that reason, the proposed new rules would not allow the cultivation of oyster species that are not native to Texas or the cultivation of oysters that are not propagated in Texas from oysters collected in Texas, unless the department determines that such importation can be done without threatening native oyster stocks. By requiring all oysters in mariculture operations to be native species grown in Texas from native broodstock or department-approved broodstock, the department seeks to ensure that wild oyster populations and the ecosystems they inhabit are not threatened by the escape or accidental release of organisms that are not genetically compatible. The deadline of December 31, 2027 is intended to encourage prospective permittees who seek to utilize genetically acceptable stock obtained outside of Texas to do so within a limited amount of time, after which the department expects all stock to be propagated in Texas facilities.

Proposed new subsection (h) would set forth the department's inspection, sampling, and permit provision authority. In order to ensure that the provisions of the proposed new rules are being followed, the department must be able to inspect the permitted areas, facilities, infrastructure, containers, vessels, and vehicles used to engage in cultivated oyster mariculture activities. Similarly, the department must be able to determine the genetic identity of all oysters used in oyster mariculture activities. Therefore, the proposed new rules would reflect those priorities. Addition-

ally, it is impossible for the proposed new rules to contemplate and address the unique circumstances that could exist in any given mariculture operation. For this reason, the rules would allow the department to include specific permit provisions in any given permit, as circumstances dictate.

Proposed new subsection (i) would prescribe notification requirements for permittees in the event of disease outbreaks or other disruptions that could result in the release of pathogens or farmed oysters into the surrounding ecosystem. The department believes it is important to be notified as quickly as possible in the event of a condition that could result in an immediate threat to native ecosystems, such as the emergence of contagious disease in a facility transmissible to wild oysters outside of the facility, or the physical breaching of infrastructure (which could be caused by severe weather, marine collision, etc.) that could result in the unintentional broadcast of stock or larvae from the facility to surrounding areas. Therefore, the proposed new subsection would require a permittee to notify the department within 24 hours of the discovery within a permitted area of a disease or any condition, manmade or natural, that creates a threat of the unintentional release of stock or larvae. The proposed new provision would make an exception for dermo (*Perkinosis marinus),* a microscopic oyster parasite that is so common in natural ecosystems as to be ubiquitous.

Proposed new subsection (j) would allow the department to take any appropriate action, including ordering the cessation of activities and the removal of all stock and larvae from a permitted area, in response to a disease condition (other than dermo) or the suspension or revocation by a federal or state entity of a permit or authorization required to be held under the subchapter. Clearly, the presence of disease within a permitted area is a potential threat to native ecosystems and therefore cause for concern, response, and preventative measures, up to and including cessation of operations and the removal of stock, as appropriate. Similarly, failure by the permittee to comply with the rules would be cause for the department to order the suspension of operations, including the removal of all stock, until the deficiency is remedied, and the department authorizes resumption of permitted activities in writing. Therefore, proposed new subsection (k) would so stipulate.

Proposed new subsection (l) would establish the legal size at which oysters may be harvested and transported from a COMP. The department's rules governing the harvest of wild oysters establish a minimum size of three inches for lawful harvest. Because farmed oysters grow faster and are meatier than wild oysters, the proposed new rules would establish a minimum size of 2.5 inches, but live oysters of less than 2.5 inches could not leave a COMP facility, which is necessary because the NSSP requires the establishment of a maximum size for nursery oysters grown in waters classified as Restricted or Prohibited (given a minimum of 120 days for depuration).

Proposed new subsection (m) would restrict the harvest of oysters in a COMP to daylight hours, which is necessary to enhance enforcement and inspection activities. It is easier to observe and document harvest activities in daylight.

Proposed new subsection (n) would address subpermittees. The department acknowledges that it is not possible for a single permittee to conduct all the activities authorized by a permit, so the proposed new rules would allow permittees to designate subpermittees to perform permitted activities in the absence of the permittee. In order to prevent confusion and misunderstandings, the proposed new rules would require subpermittees to be named on the permit, and, at all times they are engaged in a regulated activity, to possess a copy of the permit under which the activity is being performed and subpermittee authorization signed and dated by both the permittee and the subpermittee. The proposed new subsection also would stipulate that permittees and subpermittees are jointly liable for violations. The department reasons that a permittee, as the person to whom a permit is issued, is responsible for compliance with the provisions of the subchapter, and any person the permittee designates to perform permitted activities should be held accountable as well.

Proposed new subsection (o) would prescribe the marking requirements for a permitted area. The proposed new subsection would require the installation and maintenance of boundary markers, require the boundary markers to be at least six inches in diameter, extend at least three feet above the water at mean high tide, be of a shape and color visible at one half-mile under conditions that do not constitute restricted visibility, and bear the permittee's identifier. The department considers the standards to be a reasonable way of identifying a permitted area. The proposed new subsection would also require the installation, functionality, and maintenance of any safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (U.S.C.G.), and require permittees to repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department. As the state agency with primary responsibility for water safety, the department strongly believes that compliance with applicable federal regulations regarding safety lights and signals is important.

Proposed new subsection (p) would prohibit the transfer or sale of permits. The department reasons that the permit application process set forth in the proposed new rules exists to ensure that a person who seeks to engage in permitted activities meets all of the requirements of the various governmental entities with regulatory jurisdiction before being allowed to engage in permitted activities. Allowing sale or transfer of permits would defeat the purpose of the application process and introduce administrative complexity.

Proposed new subsection (q) would require permittees at their expense to remove all containers, enclosures, and associated infrastructure from public waters within 60 days of permit expiration or revocation. The department believes it is not appropriate to allow a facility to be abandoned in public water, which would constitute a danger, a nuisance, and an impediment to public enjoyment.

Rough weather is not uncommon in coastal waters and though infrequent, severe events such as tropical storms and hurricanes are not rare. Such events have the potential to destroy facilities and distribute the detritus and debris over long distances. For this reason, proposed new subsection (r) would require a valid gear tag to be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag would be required to bear, in legible fashion, the name and address of the permittee and the permit identifier of the permitted area. The proposed new subsection would allow the department to identify components so permittees could retrieve or dispose of them properly.

Proposed new subsection (s) would require oysters bound for sale to be in containers that are tagged as required by the NSSP and DSHS regulations, and to bear the destination of the container by permit identifier and/or business name and physical

address. Shellfish sanitation is strictly regulated at the federal and state levels because of the known health hazards associated with mishandled shellfish. The department believes that oysters destined for the food chain should be handled in accordance with appropriate legal requirements. Additionally, because the department wishes to ensure that cargoes of farmed oysters are not commingled with wild-caught oysters, the proposed new subsection would require information about cargo destination, which would allow the matching of records required to be maintained by buyers and sellers of shellfish.

Proposed new subsection (t) would set forth the requirements for transporting oyster seed. As discussed elsewhere in this preamble, the department seeks to ensure the separation at all times of farmed oysters from wild-caught oysters. It is unlawful in Texas for anyone to possess a wild-caught oyster less than three inches in size. Because the proposed new rules would allow the movement of oysters of less than three inches in size to hatcheries, from hatcheries to nurseries, and from nurseries to COMP facilities, it is therefore necessary to prescribe a documentation mechanism to be used during the transport of oyster seed or larvae for permitted activities. An Oyster Seed Transport Document would be required to accompany all oyster seed or larvae that is possessed outside of a permitted area. The document would be required to bear the name, address and permit identifier of each permittee from whom the oyster seed or larvae was obtained, the name, address, and permit identifier of each permittee to whom the oyster seed or larvae is to be delivered, and precisely account for and describe all containers in possession. In this way the department is able to ensure that persons in possession of undersized oysters are able to document the source and destination of the oysters in their possession.

Proposed new subsection (u) would require vessels used to engage in activities regulated under the proposed new subchapter to prominently display an identification plate supplied by the department at all times the vessel is being used in such activities. The provision is necessary to enable enforcement personnel to quickly and efficiently identify vessels working on permitted areas or being used to carry farmed oysters.

Proposed new §58.354, concerning Oyster Seed Hatchery, would allow a person to whom the department has issued a broodstock permit under the provisions of Chapter 57, Subchapter F of this title for the collection of wild oysters to furnish oyster seed or larvae produced from wild-caught oysters to a COMP or nursery permitted under this subchapter, but would stipulate that all oyster seed or larvae leaving such a facility must be accompanied by the Oyster Seed Transport Document set forth in §58.352(t), and for the same reasons.

Proposed new §58.355, concerning Permit Application, would prescribe the application requirements to obtain a permit issued under the proposed new subchapter. Proposed new subsection (a) would require an applicant to submit an administratively complete application and stipulate that an application will not be reviewed unless it is administratively complete. As discussed earlier in this preamble with the respect to the definition of "administratively complete," it is inefficient to begin any evaluation of a prospective project unless all pertinent information has been obtained, including evidence that the applicant has obtained or is in the process of obtaining all necessary authorizations and permits from other government entities. Therefore, the application would require the key information necessary for the department to determine whether or not permit issuance is feasible. The application would require the applicant to prepare and submit an Operation Plan, evidence of the necessary permits from other governmental entities, and a natural resource survey (using department-approved protocols). Proposed new subsections (b) and (c) would create a mechanism for public comment on proposed projects. Proposed new subsection (b) would stipulate that the department publish public notice of a permit application, which is necessary to provide interested and affected members of the public an opportunity to comment on the pending permit application. The department will consider all public comment relevant to matters under the jurisdiction of the department. The department is the primary state agency for fish and wildlife management and water safety, and is involved to a lesser extent in several other aspects, such as water quality, environmental flows, and environmental pollution enforcement and response. For these reasons, the department believes it is critical that the public be made aware of permit applications and given comment opportunity; however, the department will only consider comment relevant to matters under the department's jurisdiction, including but not limited to aquatic resource and ecosystem impacts, recreational and commercial user impacts, and water safety impacts. Proposed new subsection (c) would, for prospective projects within or partially within public waters, require the department to hold a public meeting in the city or municipality closest to the proposed permitted area to take public comment on the proposed project. The department would publish notice of the public meeting at least two weeks prior to the meeting, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area, and the costs of newspaper notice would be borne by the applicant. The proposed new subsection would also condition any permit issuance on payment of publication costs to the department. Proposed new subsection (d) would stipulate the various fees associated with permits issued under the proposed new subchapter must accompany the application.

The fee requirements for permits issued under the proposed new subchapter are created in this rulemaking; however, the fee amounts are established in another proposed rulemaking published elsewhere in this issue. As a convenience, the department includes an explanation in both proposed rulemakings to explain the department's methodology for determining the fee amounts. The application fee for a permit issued under the proposed new subchapter would be $200, which represents the cost to the department of the time for a biologist to evaluate a prospective project. The proposed annual fee for a COMP is $450 per acre per year (unless the COMP is not located in public water, in which case the fee would consist solely of the same inspection fee as that for a nursery facility, since the inspection would be similarly less extensive), which is the estimated cost to the department for conducting an annual facility inspection, which is an NSSP requirement. This value was derived by calculating the payroll, vehicle, boat, and travel values for two department technicians to travel to a site, launch a boat, and conduct an inspection, which yields a total cost of approximately $364. By statute (Parks and Wildlife Code, §75.0105) the department is required to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, taking 20 percent of the department's inspection expense rounding up to the nearest $50 increment yields a permit fee of $450.

The proposed annual fee for a nursery permit would be $170 per acre per year, which is the estimated cost to the department for conducting an annual facility inspection, which is required by the NSSP. This value was derived by calculating the payroll, vehicle,

boat and travel values for one department technician to travel to a site and conduct an inspection, yielding a total cost of approximately $138. By statute (Parks and Wildlife Code, §75.0105), the department is required to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, taking 20 percent of the department's inspection expense (≈$28) and rounding up to the nearest $10 increment yields a permit fee of $170. In addition, if the nursery facility is located on public water, an additional fee of $0.023 per square foot per year will be assessed, which represents a proportionally equivalent value of a COMP for the use of public water.

Proposed new §58.356 would provide for permit renewal, which would require an applicant to submit an administratively complete application for permit renewal, accompanied by the appropriate fee.

Proposed new §58.357, concerning Permit Amendment, would provide for amendments to an existing permit, provided the permittee has completed and submitted an administratively complete application for permit renewal and possesses all necessary authorizations and permits required by any other state or federal entity for the conduct of the activities for which the amendment is sought. The department considers that a permittee during the course of period validity might desire to increase the intensity of an operation or alter some other facet of production. The department is not averse to amending permits to accommodate such things, provided the applicant possesses all necessary authorizations and permits from other regulatory authorities with respect to the prospective amendment. The department will not, however, consider an amendment that would increase the size of a permitted area. In such cases, the applicant would have to go through the permit application process set forth in §58.355. The proposed new subsection would also prohibit amendment of an expired permit, for obvious reasons.

Proposed new §58.358, concerning Reporting and Recordkeeping would establish the necessary administrative responsibilities of permittees. The proposed new section would require permittees to maintain current, accurate records of all shellstock and larvae acquired, introduced, removed, or harvested from a permitted facility and to submit an annual report to the department. For a variety of reasons, not the least of which are public health and the protection of native ecosystems, it is necessary to be able to verify that cultivated oyster mariculture activities are being conducted as set forth in the proposed new subchapter. Therefore, the proposed new rules require permittees to keep and maintain records regarding permitted activities, and to submit an annual report, which enables the department to quickly and accurately identify improper activities, if questions arise. Additionally, under Parks and Wildlife Code, Chapter 47, no person may engage in business as a wholesale or retail fish dealer unless that person has obtained the appropriate license, and Under Parks and Wildlife Code, §66.019, no dealer who purchases or receives aquatic products directly from any person other than a licensed dealer may fail to file the report with the department each month on or before the 10th day of the month following the month in which the reportable activity occurred. The proposed new section would therefore make clear that permittees, as persons who buy and sell an aquatic product, are required to comply with the statistical reporting requirements of Parks and Wildlife Code, §66.019. The proposed new subsection also would stipulate a records retention requirement of two years. Violations of the proposed new rules are a Class B misdemeanor by statute, and two years is the statute of limitations for Class B misdemeanors.

Proposed new §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision, would allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: the subchapter; Parks and Wildlife Code, Chapters 47, 66, 76, 77, 78, or 75 (for which a commercial license or permit is required); a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the proposed new section would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife or to collect and possess wildlife for commercial purposes should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to persons who exhibit a demonstrable disregard for laws andregulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted

in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The amendment also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

Proposed new §58.360, concerning Prohibited Acts, would identify specific acts that constitute violations of the proposed new subchapter.

Proposed new paragraph (1) would make it a criminal act to possess a commercial oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter. The provision is necessary because the department wishes to employ measures to safeguard native oyster populations from exploitation by unscrupulous persons. Prohibiting the possession of common oystering gear on board a vessel transporting farmed oysters would obviate the opportunity for persons to engage in the harvest of native oysters while transporting farmed oysters. For similar reasons proposed new paragraph (2) would create an offense for commingling or allowing the commingling of wild-caught and farmed oysters.

Proposed new paragraphs (3) and (4) clarify that it is an offense for failing to notify the department within 24 hours upon the discovery of a disease condition within a permitted facility and for failing to notify the department within 24 hours upon discovery of any condition that could result in the unintentional release of shellstock or larvae. As discussed previously in this preamble with respect to §58.353(i), the department wishes to prevent the release of farmed oysters and oyster diseases to wild populations.

Proposed new paragraph (5) clarifies creates an offense for failing to maintain all corner markers of the permitted area of a facility within public water as prescribed by the proposed new subchapter, which is necessary for the reasons described earlier in this preamble with respect to proposed new §58.353(o).

Proposed new paragraph (6) would create an offense for failing to remove all enclosures and infrastructure from public waters within 60 calendar days of permit expiration or revocation. Under the provisions of proposed new §58.353(q), permittees would be required to remove, at the expense of the permittee, all containers, enclosures and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation. The proposed new paragraph would make it a criminal offense not to do so.

Proposed new paragraph (7) would make it an offense to operate a COMP or nursery facility except as specified by this subchapter and the provisions of a permit. The provision is intended to ensure that criminal liability is not limited to the specific offenses identified throughout the proposed new subchapter, but to any violation of the proposed new subchapter or the provisions of a permit issued under the proposed new subchapter.

Finally, proposed new paragraph (8) would make it an offense to operate a COMP or nursery facility without all authorizations and permits required by any federal, state, or local governmental authority. Possession of all necessary authorizations and permits is a predicate for facility operation. The department believes that continuing to operate a facility without one or more authorizations or permits constitutes a criminal act.

Proposed new §58.361, concerning Violations and Penalties, would provide that a person who violates a provision of this subchapter or a provision of a permit issued under this subchapter commits an offense punishable by the penalty prescribed by the Parks and Wildlife Code, §75.0107. Violations and penalties are prescribed by statute and the department believes it is prudent to reference the applicable statutory provisions for clarity. Finally, the proposed new section provides that a permit issued under this section is not a defense to prosecution for any conduct not specifically authorized by the permit. The department believes it is prudent to reinforce that a permit issued under this section does not relieve a permittee or subpermittee of criminal responsibility as the offenses prescribed by statute constitute a Class B Parks and Wildlife Code Misdemeanor.

Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years that the new rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules. The fees imposed by the proposed new rules will recover the agency's cost of routine administration and enforcement.

Mr. Riechers also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the discharge of the legislature's direction under Parks and Wildlife Code, §75.0103(a) to establish a program governing cultivated oyster mariculture and the discharge of the agency's general duty to protect and conserve the aquatic resources of the state and provide for water safety.

There will be adverse economic effects on persons required to comply with the rules as proposed, consisting of the costs to prepare the operational plan and natural resource survey required by the rules; fees; costs for gear tags; and the cost of the public notice required by the rules. The estimated maximum probable annual economic costs for persons operating a COMP are $2,050 for the first year ($200 for the permit application, $450 per acre per year; approximately $200 for gear tags; $500 for the Operation Plan; $500 for the natural resource survey; and $200 for the public notice) and $450 each year thereafter ($450 per acre per year). This amount would be less for a COMP located on private property, since the inspection fee would be $170 and the per-acre fee for use of public water would not apply. The probable annual economic costs for a person operating a nursery facility are estimated to be $370 for the first year ($200 for the initial application and $170 per year plus $0.023 per square foot).

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement

and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact "to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that no small businesses, microbusiness, or rural communities will be affected by the proposed new rules. House Bill 1300 created the legal basis for the regulation of cultivated oyster mariculture operations in Texas; therefore, no person is presently engaged in the practice, which means the proposed new rules cannot impact any small businesses, micro-businesses, or rural community. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will create a government program, as directed by the Texas Legislature under the provisions of Parks and Wildlife Code, §75.0103(a); not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of any fee, by imposing application and facility fees; will create a new regulation (the entire subchapter is new); not expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy, although the creation of the cultivated oyster mariculture program has the possibility of creating a new industry in the state.

Comments on the proposal may be submitted to Lance Robinson at (512) 389-4649, e-mail: lance.robinson@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The new sections are proposed under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the location and size of a cultivated oyster mariculture operation; the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; marking structures for the cultivation of oysters in a cultivated oyster mariculture operation; fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0104, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

The proposed new sections affect Parks and Wildlife Code, Chapter 75.

§58.350. Applicability.

This subchapter applies to cultivated oyster mariculture in this state. No provision of this subchapter may be construed as to relieve any person of the need to comply with any other applicable provision of federal, state, or local laws.

§58.351. Application of Shellfish Sanitation Rules of Department of State Health Services.

All cultivated oyster mariculture operations conducted under Parks and Wildlife Code, Chapter 75, must comply with the applicable shellfish sanitation rules of the Texas Department of State Health Services in 25 TAC Chapter 241, Subchapter B.

§58.352. Definitions.

When used in this subchapter, the following words and terms shall have the following meanings, except where the context clearly indicates otherwise. All other words and terms used in this subchapter shall have the meanings assigned by the Parks and Wildlife Code.

(1) Administratively complete--An application for a permit or permit renewal that contains all information requested by the department, as indicated on the application form, without omissions.

(2) Container--Any bag, sack, box, crate, tray, conveyance, or receptacle used to hold, store, or transport oysters possessed under a permit issued under this subchapter.

(3) Cultured oyster mariculture facility (facility)--Any building, cage, or other infrastructure within a permitted area.

(4) Gear tag--A tag composed of material as durable as the device to which it is attached.

(5) Infrastructure--A building, platform, dock, vessel, cage, nursery structure, or any other apparatus or equipment within a permitted area.

(6) Larvae--The free-swimming, planktonic life stage of an oyster.

(7) National Shellfish Sanitation Program (NSSP)--The cooperative program administered by the United States Food and Drug Administration (USFDA) for the sanitary control of shellfish produced and sold for human consumption in the United States and adopted by rule of the Department of State Health Services.

(8) Nursery structure--A tank or chamber or system of tanks or chambers or other, similar devices in which a cultivated oyster is grown.

(9) Oyster seed--Shellstock of less than legal size.

(10) Permitted area--The geophysical and/or geographical area identified in a permit where cultivated oyster mariculture activities are authorized.

(11) Permit Identifier (permit ID)--A unique alphanumeric identifier issued by the department to a permittee holding a Cultivated Oyster Mariculture permit.

(12) Permittee--A person who holds a permit issued under this subchapter.

(13) Prohibited Area--As defined by Texas Health and Safety Code, §436.002(27).

(14) Restricted Area-- As defined by Texas Health and Safety Code, §436.002(30).

(15) Restricted visibility--Any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorm, sandstorms, or any other similar causes.

(16) Shellstock (stock)--Live eastern oysters *(Crassotrea virginica)* in the shell.

(17) Wild-caught oyster--An oyster harvested from natural oyster beds.

§58.353. General Provisions.

(a) No person may engage in cultivated oyster mariculture in this state unless that person either:

(1) physically possesses a valid permit issued by the department authorizing the activity; or

(2) is acting as a subpermittee as provided in this subchapter.

(b) A Cultivated Oyster Mariculture Permit (COMP) authorizes a person to purchase, receive, grow, and sell cultivated oysters.

(c) A Cultivated Oyster Mariculture Permit--Nursery Only (nursery permit) authorizes a person to purchase, receive, and grow oyster seed and larvae, and sell oyster seed to a COMP permittee.

(d) No person may conduct an activity authorized by a permit issued under this subchapter at any location other than the location specified by the permit.

(e) The period of validity for a permit issued under this subchapter is 10 years, subject to the limitations of this subchapter.

(f) Unless otherwise specifically authorized in writing be the department, one year from the date of issuance of a COMP and by the anniversary of the date of issuance for each year thereafter, the permittee must provide evidence to the department's satisfaction that at least 100,000 oyster seed per acre of permitted area has been planted.

(g) Unless otherwise specifically authorized by the department in writing, cultivated oyster mariculture is restricted to seed and larvae from native Eastern oyster (Crassostrea virginica) broodstock collected in Texas waters and propagated in a hatchery located in Texas.

(1) The department may authorize a person permitted under this subchapter to, on or before December 31, 2027, import:

(A) triploid, tetraploid seed, larvae, and or semen/eggs (germplasm) produced in permitted out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(B) seed, larvae semen/eggs (germplasm) produced from Texas broodstock at out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state.

(2) A department authorization made under the provisions of this subsection must be in writing and provide for any permit conditions the department deems necessary.

(3) The department will not authorize the possession of any oyster, larvae, or oyster seed that the department has determined, in the context of the prospective activity, represents a threat to any native oyster population, including to genetic identity.

(h) The department may:

(1) inspect any permitted area, facility, infrastructure, container, vessel, or vehicle used to engage in cultivated oyster mariculture;

(2) sample any oyster in a permitted area, facility, container, vessel, or vehicle used to engage in cultivated oyster mariculture in order to determine genetic lineage; and

(3) specify any permit provisions deemed necessary.

(i) The holder of a COMP or nursery permit must notify the department within 24 hours of the:

(1) discovery of any disease condition within a permitted area; and

(2) discovery of any condition, manmade or natural, that creates a threat of the unintentional release of stock or larvae.

(3) The requirements of this subsection do not apply to the discovery of dermo (Perkinosis, *Perkinsus marinus).*

(j) The department may take any action it considers appropriate, including ordering the removal of all stock and larvae from a permitted area or facility and the cessation of permitted activities, upon:

(1) a determination that a disease condition other than dermo (Perkinosis, *Perkinsus marinus)* exists; or

(2) the suspension or revocation by a federal or state entity of a permit or authorization required under §58.355 of this title (relating to Permit Application).

(k) The department may order the suspension of any or all permitted activities, including the removal of all stock and larvae from a permitted area or facility, upon determining that a permittee is not compliant with any provision of this subchapter, which suspension shall remain in effect until the deficiency is remedied and the department authorizes resumption of permitted activities in writing.

(l) Size limit.

(1) No person may remove or cause the removal of any oyster less than 2.5 inches in length (measured along the greatest length of the shell) from a COMP permitted area.

(2) Oysters greater than one inch in length (as measured along the greatest length of the shell) produced under a nursery permit in waters classified as a Restricted Area must be transferred to a DSHS-approved depuration area and held in that depuration area for a minimum of 120 days before harvest.

(3) No person may remove or cause the removal of oysters obtained by a COMP from a nursery facility located in waters classified as a Prohibited or Restricted Area until a minimum of 120 days following the date of transfer to the COMP.

(m) Harvest of oysters under this subchapter is unlawful between sunset and 30 minutes after sunrise.

(n) Except as may be specifically provided otherwise in this section, activities authorized by a permit issued under this subchapter

shall be conducted only by the permittee or subpermittee named on the permit.

(1) A permittee may designate subpermittees to perform permitted activities in the absence of the permittee.

(2) At all times that a subpermittee is conducting permitted activities, the subpermittee shall possess on their person:

(A) a legible copy of the appropriate permit under which the activity is being performed; and

(B) a completed subpermittee authorization. The subpermittee authorization shall be on a form provided or approved by the department and shall be signed and dated by both the permittee and the subpermittee.

(3) It is an offense for a permittee to allow any permitted activity to be performed by a person not listed with the department as a subpermittee as required under this subsection.

(4) A permittee and subpermittee are jointly liable for violations of this subchapter or the provisions of a permit issued under this subchapter.

(o) A permittee shall, prior to the placement of any infrastructure within a permitted area located in or on public water:

(1) mark the boundaries of the permitted area with buoys or other permanent markers and continuously maintain the markers until the termination of the permit. All marker, buoys, or other permanent markers must:

(A) be at least six inches in diameter;

(B) extend at least three feet above the water at mean high tide;

(C) be of a shape and color that is visible for at least one half-mile under conditions that do not constitute restricted visibility; and

(D) be marked with the permit identifier assigned by the department to the permitted area, in characters at least two inches high, in a location where it will not be obscured by water or marine growth; and

(2) install safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (U.S.C.G.) must be installed and functional. A permittee shall repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department.

(p) Permits shall not be transferred or sold.

(q) Permittees must remove, at the expense of the permittee, all containers, enclosures and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation.

(r) A valid gear tag must be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear the name and address of the permittee and the permit identifier of the permitted area. The information on a gear tag must be legible.

(s) It is unlawful for any person to remove or cause the removal of oysters from a COMP area for purposes of delivery and sale unless the oysters are in a container that has been tagged in accordance with the applicable provisions of the NSSP concerning shellstock identification, and this subchapter. In addition to the tagging requirements imposed by the NSSP, the tag must clearly identify the destination, by permit identifier and/or business name and physical address, to which the shellstock is to be delivered.

(t) Except as provided by subsection(s) of this section for oysters transported for delivery and sale, it is unlawful for any person to possess oyster seed or larvae outside of a permitted area unless the person also possesses a completed Oyster Seed Transport Document.

(1) An Oyster Seed Transport Document must:

(A) be on a form provided or approved by the department;

(B) contain the name, address and, if applicable, permit identifier of each person from whom the oyster seed or larvae was obtained;

(C) contain the name, address, and permit identifier of each permittee to whom the oyster seed or larvae is to be delivered; and

(D) precisely account for and describe all containers in possession.

(2) Each Oyster Seed Transport Document shall bear a numeric or alphanumeric unique identifier supplied by the permittee. Identifiers under this subsection must be systematic and sequential and no identifier may be used more than once.

(u) A vessel used to engage in activities regulated under this subchapter shall prominently display an identification plate supplied by the department at all times the vessel is being used in such activities.

§58.354. Oyster Seed Hatchery.

A person to whom the department has issued a broodstock permit under the provisions of Chapter 57, Subchapter F of this title for the collection of wild oysters may furnish oyster seed or larvae produced from wild-caught oysters to a COMP or nursery permitted under this subchapter; however, all oysters that leave the hatchery shall be accompanied by a transport document meeting the requirements of §58.353(t) of this title (relating to General Provisions).

§58.355. Permit Application.

(a) An applicant for a permit under this subchapter must submit an administratively complete application to the department. The department will not review an application that is not administratively complete.

(b) The department will publish notice of the application for a permit under this subchapter and provide opportunity for public comment. The department will consider all public comment relevant to matters under the jurisdiction of the department.

(c) For proposed facilities that will be within or partially within public water, the department will hold a public meeting in the city or municipality closest to the proposed permitted area to take public comment on the proposed project. The department will publish notice of the public meeting at least two weeks prior to the meeting, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area. Costs of newspaper notice are the responsibility of the applicant and no permit will be issued until the department has received payment for the required notice.

(d) An application for a permit under this subchapter shall be accompanied by the applicable permit fee established in §53.13 of this title (relating to Commercial Licenses and Permits (Fishing)).

(1) The department shall assess a nonrefundable annual fee based on the size of the permitted area for which a COMP or nursery permit is issued. The fee is as specified under §53.13 for a COMP.

(2) For nursery structures located on public waters, a surcharge in addition to the fee imposed by paragraph (1) of this subsection shall be assessed as specified under §53.13.

(3) The fees established in this subsection shall be recalculated at three-year intervals beginning on the effective date of the permit and proportionally adjusted to any change in the Consumer Price Index.

(4) The fees established by this subsection are due annually by the anniversary of the date of permit issuance.

§58.356. Renewal.

The department may renew a permit under this subchapter, provided the permittee has submitted an administratively complete application for permit renewal on a form provided or approved by the department, accompanied by the permit renewal fee specified in §58.13 of this title (relating to Commercial Licenses and Permits (Fishing)).

§58.357. Amendment.

(a) The department may amend a permit issued under the provisions of this subchapter, provided the permittee:

(1) has submitted an administratively complete application for permit amendment on a form provided or approved by the department; and

(2) possesses all necessary authorizations and permits required by any other state or federal entity for the conduct of activities contemplated in the permit amendment.

(b) The department will not approve an amendment to increase the size of a permitted area. A permittee who seeks to increase the size of a permitted area must apply for a new permit and all provisions of this subchapter relating to permit applications apply.

(c) An expired permit is not eligible for permit amendment.

§58.358. Reporting and Recordkeeping.

(a) A permittee shall:

(1) maintain a current, accurate record of all shellstock and larvae acquired, introduced, removed, or harvested from a permitted facility;

(2) submit the monthly harvest reports prescribed by Parks and Wildlife Code, §66.019 on a form provided or approved by the department; and

(3) complete and submit an annual report to the department on a form provided or approved by the department by no later than January 31 of each year.

(b) The records and reports required by this section shall be continuously maintained by the permittee for two years from the date of the record or report.

§58.359. Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision.

(a) The department may refuse to issue to or renew a permit under this subchapter to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for a violation of:

(1) this subchapter;

(2) Parks and Wildlife Code, Chapters 47, 66, 76, 77, 78, or 75 for which a commercial license or permit is required;

(3) a provision of the Parks and Wildlife Code that is not described by paragraph (2) of this subsection that is punishable as a:

(A) Parks and Wildlife Code:

(i) Class A or B misdemeanor;

(ii) state jail felony;

(iii) felony; or

(D) offense under Parks and Wildlife Code, §63.002; or

(4) the Lacey Act (16 U.S.C. §§3371-3378).

(b) The department may refuse to issue a permit under this subchapter to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from obtaining a permit under this chapter.

(c) The department may refuse to issue a permit under this subchapter to any person who does not meet the criteria of this subchapter for issuance of a permit, including but not limited to failure to submit an administratively complete application.

(d) An applicant for a permit, permit renewal, or permit amendment under this subchapter may request a review of a decision of the department to refuse permit issuance, renewal, or amendment (as applicable).

(1) An applicant seeking review of a decision of the department under this subsection must request the review within 10 working days of being notified by the department that the application has been denied.

(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection, unless another date is established in writing by mutual agreement between the department and the requestor.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with understanding of oyster mariculture requirements or other permits issued by the department, appointed or approved by the executive director or designee.

(5) The decision of the review panel is final.

§58.360. Prohibited Acts.

Except as provided in this subchapter, it is an offense for a person holding a permit issued under this chapter to:

(1) possess a commercial oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter;

(2) commingle or allow the commingling of wild-caught oysters with oysters possessed under the provisions of Parks and Wildlife Code, Chapter 75, and this subchapter;

(3) fail to notify the department within 24 hours upon the discovery of a disease condition within a permitted facility that is required to be reported under the provisions of this subchapter;

(4) fail to notify the department within 24 hours upon discovery of any condition that could result in the unintentional release of shellstock or larvae;

(5) fail to maintain all corner markers of the permitted area of a facility within public water;

(6) fail to remove all enclosures and infrastructure from public waters within 60 calendar days of permit expiration or revocation;

(7) operate a COMP or nursery facility except as specified by this subchapter and the provisions of a permit; or

(8) operate a COMP or nursery facility without all authorizations and permits required by any federal, state, or local governmental authority.

§58.361. Violations and Penalties.

(a) A person who violates a provision of this subchapter or a provision of a permit issued under this subchapter commits an offense punishable by the penalty prescribed by Parks and Wildlife Code, §75.0107.

(b) A permit issued under this section is not a defense to prosecution for any conduct not specifically authorized by the permit.

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

Filed with the Office of the Secretary of State on April 6, 2020.

TRD-202001355
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §65.49

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.49, concerning Alligators. The proposed amendment would clarify language regarding the payment of the fee for a CITES hide tag and eliminate obsolete references to department forms. The Convention on International Trade in Endangered Species (CITES) is an international agreement to protect endangered plants and animals. The American alligator, although not endangered, is subject to CITES documentation requirements because of similarity of appearance to other endangered crocodilian species. Under current rule it is not clear that the fee for a hide tag must be submitted with the application for the tag. The proposed amendment would make it clear that the application must be accompanied by the fee. The proposed amendment would also replace a reference to a specific form number and stipulate that the report be made on a form supplied for approved by the department.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the amendment as proposed is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Macdonald also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be clarity of regulations.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, and rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; will not create a new regulation; not expand, limit, or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Mitch Lockwood at (512) 389-4363, e-mail: mitch.lockwood@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §65.003, which authorizes the commission to regulate taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations to provide for the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides,

alligator eggs, or any part of an alligator; and control of nuisance alligators.

The proposed amendment affects Parks and Wildlife Code, Chapter 65.

§65.49. Alligators.

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

(e) Reports; return of unused tags.

(1) Except as provided in subsections (b)(6) and (c)(5) of this section, a person who takes an alligator shall complete an alligator hide tag report [~~(PWD-304)~~] immediately upon harvest. The report shall be submitted to the department within seven days of harvest.

(2) A person who takes an alligator under subsection (b)(5) of this section shall complete and submit to the department an alligator hide tag report, accompanied by the fee specified in §53.8 of this title (relating to Alligator Licenses, Permits, Stamps, and Tags, [~~(PWD-304A)~~] within 72 hours of harvest.

(3) A person to whom the department has issued more than one hide tag shall file an annual report on a form supplied or approved by the department [~~(PWD 370)~~] accounting for all tags within 10 working days following the close of the open season in the county for which the tags were issued. All unused tags shall be returned with this report.

(4) The department may refuse to issue additional hide tags to any person who:

(A) does not file the reports as required by this section; [~~or~~]

(B) does not return unused hide tags as required by this section; or [~~.~~]

(C) fails to pay the fee for a hide tag.

(f) - (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 6, 2020.

TRD-202001360
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 389-4775

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Department proposes amendments to §65.81 and §65.82, concerning Disease Detection and Response. The proposed amendments are intended to replace emergency rules affecting Subchapter B, Division 1 adopted on January 10, 2020 *(Texas Register,* 45 TexReg 243), as well as to respond to additional detections of CWD in Medina and Kimble counties.

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

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD is confirmed, within which the possession and movement of live deer under department permits is restricted, and harvested deer are required to be presented at check stations to be tested for CWD. In 2016, those rules were modified *(Texas Register,* 41 TexReg 7501) in response to additional CWD discoveries in the Texas Panhandle and Medina County, creating additional Surveillance Zones (SZs) and an additional Containment Zone (CZ) in West Texas. The rules were amended again in 2017 in response to a subsequent positive test result in Medina County.

On December 18, 2019, the department received confirmation that a free ranging 5.5-year-old female white-tailed deer killed in Val Verde County had tested positive for CWD. Accordingly, the department adopted rules on an emergency basis to create a CZ and SZ in Val Verde County. This proposed rulemaking would replace the emergency rules with permanent rules.

On January 28, 2020, the department received confirmation that a 4.5-year-old male white-tailed deer and a 3.5-year-old female white-tailed deer killed in Medina County had tested positive for CWD. The location of the mortalities necessitates a conforming change to the boundaries of current CZ 3.

On February 26, 2020, the department received confirmation that a 5.5-year-old female white-tailed deer held in a deer breeding facility in Kimble County had tested positive for CWD. The proposed amendment to §65.80, concerning Surveillance Zones; Restrictions, would create new SZ 5 in response.

The proposed amendment to §65.81, concerning Containment Zones; Restrictions, would create new CZ 4 in a portion of Val Verde County and slightly expand current CZ 3 in Medina and Uvalde counties. A CZ is a specific location in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable. With respect to the CZ that would be established by this rulemaking, the department assumes the highest probability of additional detection exists within approximately a five-mile radius from the approximate location where CWD is detected in a free-ranging deer and within approximately a two-mile radius from the location where it has been detected within

a captive population. Although the CZ designation imposes mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer, it is not necessary for hunters to be aware of or concerned with CZ boundaries, since the CZ is wholly within an SZ where mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer also apply. This rulemaking does not create a CZ in Kimble County for two reasons. First, the discovery occurred in a breeder deer facility, which is required by law to be designed and built to both prevent the free movement of deer and contact with free-ranging deer, which is imperative for the control and management of CWD. Second, the facility where CWD was discovered is operating under a Texas Animal Health Commission herd plan, which restricts deer movement and requires CWD testing at an equal or higher level to what is required in a CZ.

The proposed amendment to §65.82, concerning Surveillance Zones; Restrictions, would create new SZ 4 in a portion of Val Verde County surrounding proposed new CZ 4 and new SZ 5 in Kimble County. An SZ is a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected. The SZ in Val Verde County represents an approximately 15-mile buffer around CZ 4; in Kimble County the buffer is approximately five miles because the detection occurred in a deer breeding facility (a confined herd).

Within CZs and SZs, the movement of live deer is restricted and presentation of harvested deer at department check stations is mandatory. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply to deer harvested within a CZ or SZ. The boundaries of proposed the new CZs and SZs have been tailored to as much as possible follow recognizable features such as roadways and power line rights-of-way, and county boundaries, and the department notes that any designation of a CZ or SZ is always accompanied by a robust public awareness effort.

Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of disease management activities will administer and enforce the rules as part of their current job duties and resources.

Mr. Wolf also has determined that for each of the first five years the new rules as proposed are in effect the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from locations where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the continued beneficial economic impacts of hunting in Texas.

There will be no adverse economic impact on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

The department has determined that because the proposed rules affecting Val Verde County will not result in any direct economic effect on any small businesses, micro-businesses, or rural community, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

Although there is one deer breeder facility that would be included within the altered CZ in Medina and Uvalde counties created by the proposed amendment, that facility contains no deer and cannot accept new deer because it has been designated non-movement qualified (NMQ) under the provisions of Subdivision 2 of this subchapter. Similarly, only one deer breeding facility in Kimble County would be affected by the rules; it too, is NMQ. Therefore, the portion of the proposed amendment to §65.81 that affects Kimble, Medina, and Uvalde counties will not result in any direct economic effect on any small businesses, micro-businesses, or rural communities.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed new rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; expand an existing regulation (by creating new areas subject to the rules governing CZs and SZs), but will otherwise not limit or repeal an existing regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (830) 792-9677 (e-mail: mitch.lockwood@tpwd.texas.gov); or via the department's website at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, R, R-1, and Chapter 61.

§65.81. Containment Zones; Restrictions.

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

(1) Containment Zones.

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

(C) Containment Zone 3 is that portion of the state lying within the area designated as Containment Zone 3 as depicted in the following figure, more specifically described by the following latitude-longitude coordinate pairs: -99.29398096800, 29.63444908360; -99.29332773120, 29.63427752770; -99.29197515170, 29.63439690090; -99.28980120500, 29.63446380410; -99.28762690610, 29.63440631430; -99.28546157340, 29.63422467720; -99.28331448540, 29.63391967310; -99.28119484540, 29.63349260780; -99.27911173640, 29.63294531180; -99.27707408560, 29.63228013080; -99.27509062400, 29.63149991510; -99.27316985040, 29.63060800860; -99.27131999510, 29.62960823290; -99.26954898230, 29.62850487190; -99.26786439810, 29.62730265490; -99.26627345800, 29.62600673210; -99.26478297540, 29.62462265680; -99.26339933220, 29.62315635870; -99.26212845190, 29.62161412050; -99.26097577450, 29.62000254920; -99.25994623180, 29.61832854980; -99.25904422740, 29.61659929130; -99.25852031490, 29.61543045890; -99.25566836700, 29.60863858110; 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Figure: 31 TAC §65.81(1)(C)

[~~Figure:~~ ~~31 TAC §65.81(1)(C)~~]

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

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

(2) (No change.)

§65.82. Surveillance Zones; Restrictions.

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

(1) Surveillance Zones.

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

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

(E) Containment Zone 5: That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along on I.H. 10 to F.M. 2169; thence east along F.M. 2169 to County

Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 433; thence south along C.R. 433 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83.

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

(2) (No change.)

The agency certifies that legal counsel has reviewed the 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 6, 2020.

TRD-202001362
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER P. ALLIGATOR PROCLAMATION

31 TAC §§65.352, 65.353, 65.357 - 65.362, 65.365

The Texas Parks and Wildlife Department proposes amendments to §§65.352, 65.353, 65.357 - 65.362, and 65.365, concerning the Alligator Proclamation.

The proposed amendments make generally applicable changes to language governing references to reports and notifications required by rule. In such cases, the proposed amendment would stipulate that the report be made on a form supplied or approved by the department.

The proposed amendment to §65.352, concerning Definitions, would add definitions for "clutch," "egg," "export," "import," "nest disturbance," "incubation-only facility," and "partially processed alligator," alter the definitions of "egg collection," "farmer," "processed product," "retail dealer," and "wholesale dealer," and eliminate definitions for "gig," "propagation," and "subpermittee."

The current rules governing the collection and incubation of alligator eggs employ the term "clutch" when referring to groups of eggs; however, the rules do not define that term. The proposed amendment would define "clutch" as "the number of alligator eggs, both fertile and infertile, in a single alligator nest." The definition is necessary not only to provide an unambiguous meaning of the term for purposes of compliance and enforcement, but to make clear that all alligator eggs, including infertile eggs, are considered by the department to be part of a wild nest.

The proposed amendment would define "egg" as "an alligator egg" to clarify that when the term "egg" is used in any context in the rules, it means alligator eggs.

The proposed amendment would provide definitions for "export" and "import." Although the current rules govern export and import of alligators (which by statute include alligator eggs, parts and products), the department believes it is prudent to provide unmistakable meanings for those terms. Therefore, the proposed definition for "export" would be "the physical transportation of an alligator to any point outside the state of Texas." Similarly, the proposed definition for "import" would be "the physical transportation of an alligator from outside of Texas across the state line into Texas."

The proposed amendment would define "nest disturbance" as "the act of physically manipulating, handling, or tampering with an alligator nest in any way." The definition is necessary because the department has identified a deficiency in the current rules governing egg collection. Current rules unintentionally apply only to the removal of eggs and not to associated activities prior to or during removal. Alligator nests and eggs are extremely sensitive to disturbance. Because the department, based on a biological assessment, issues a specific number of nest authorizations for any given property, it is theoretically possible under current rule to disturb a nest without removing eggs, which results in unnecessary mortalities if the eggs succumb to environmental exposure or the mother abandons the nest. The proposed amendment would clarify that egg collection includes the intrusion that must occur in order to physically remove eggs.

The proposed amendment would add a definition for "incubation-only facility." Under current rule, an alligator farmer may operate a facility solely for the purpose of incubating and hatching alligator eggs for purposes of sale to another farmer. In the proposed amendment to §65.360, concerning Reporting Requirements, the department would eliminate the quarterly alligator farm report requirement for farmers operating incubation-only facilities and replace it with a single report. There is no reason to require quarterly reports for incubation-only facilities, because incubation activities occur seasonally, based on the life history of the resource. Therefore, a definition for incubation-only facility is necessary to distinguish such operations from other alligator farming operations.

The proposed amendment would define "partially processed alligator" as "a whole alligator that has been skinned except for the head, or a whole alligator that has been skinned except for the head and feet." Current rules address "processed" and "unprocessed" alligators. The department has become aware of an emerging market for whole alligators that have been prepared for culinary use by consumers, such as tailgate activities at sporting events. Such products are in a regulatory nether region under current rule. In order to eliminate misunderstandings, the proposed amendment, in conjunction with the proposed amendment to §65.357, concerning Purchase and Sale of Alligators, would define such products as "partially processed alligators," which would allow wholesale dealers to sell directly to consumers and eliminate any reporting and recordkeeping requirements for the consumer.

The proposed amendment would alter the term "egg collection" to "egg collection activities" and alter the definition to include nest disturbance in addition to removal of eggs, or possession of eggs removed from wild nests. The amendment is necessary clarify that "nest disturbance" is an egg collection activity.

The proposed amendment would alter the current definition of "farmer" to clarify that the term applies only to a person possessing a valid permit issued for that purpose by the department.

The proposed amendment would alter the current definition of "processed product" to stipulate that alligator meat that has been removed from the skeleton is a processed product, which is nec-

essary to clarify, in conjunction with the proposed amendment to §65.357, that only wholesale dealers and farmers are permitted to sell alligator meat, except as otherwise provided.

The proposed amendment would alter the definitions of "retail dealer" and "wholesale dealer" to simplify the definitions and relocate regulatory provisions to the rules where they more properly belong. A retail dealer would be defined as "a person possessing a valid retail dealer permit issued under this subchapter" and a whole dealer would be defined as "a person possessing a valid wholesale dealer permit issued under this subchapter."

The proposed amendment would eliminate the definitions for "gig," "propagation," and "subpermittee." The definition for gig is an artifact from a time when recreational alligator hunting was regulated under the subchapter and is thus unnecessary. The definition of "propagation" is superfluous, since the alligator farmer permit by rule authorizes permit holders to engage in the practice. The definition of "subpermittee" is unnecessary because it is unique to and defined within another rule regulating nuisance alligator control.

The proposed amendment to §65.353, concerning General Provisions, would alter subsection (b) to eliminate confusion by removing verbiage related to common carriers that is addressed by another provision of the rules. The proposed amendment would also clarify that no person other than a wholesale dealer or farmer may process alligator meat for sale. Although alligator meat may be possessed for resale by retail dealers and re-sold to consumers (grocery stores, restaurants, etc.), only wholesale dealers and farmers are allowed to process alligators for purposes of meat production. The proposed amendment also would incorporate an existing provision prohibiting alligator eggs collected under the subchapter from being exported. The provision is currently located in §65.358 and is being relocated for reasons of topical suitability. The proposed amendment also includes a provision to make clear the rules do not relieve any person of an obligation imposed by another legal authority regarding food safety. The department wishes to make clear that rules or statutes governing food preparation, handling, distribution, and so forth are in addition to any requirements of the subchapter.

The proposed amendment to §65.357, concerning Purchase and Sale of Alligators, consists of several changes. The proposed amendment would clarify that a retail dealer permit is not required for the purchase of packaged alligator meat for re-sale to consumers, which is necessary to definitively address the circumstances under which chain of custody and permit requirements do not apply. The proposed amendment would remove language regarding the applicability of food safety regulations, which is being relocated to another part of the rules and has been addressed earlier in this preamble. The proposed amendment would allow wholesale dealers to sell partially processed alligators, for reasons discussed in the proposed amendment to §65.352, concerning Definitions. The proposed amendment would make changes to subsection (d) to clarify the classes of persons from whom a farmer may purchase live or dead alligators. The current rules are confusing because they are predicated on the term "live or dead," which seems to imply that wholesale dealers and recreational hunters are able to sell live or dead alligators to farmers, which isn't the case. Farmers are allowed to purchase live alligators only from another farmer or a control hunter. Farmers are allowed to purchase dead alligators from another farmer, a wholesale dealer, a recreational hunter, or a control hunter. The proposed amendment would clearly delineate these distinctions and provide the additional clarification that alligator eggs may be purchased by a farmer only from a person legally authorized to sell eggs. Additionally, the proposed amendment would replace the current provision regarding department notification of impending transport or receipt of live alligators with a provision requiring notification to be effected via fax or email to the department's Law Enforcement Communications Center not less than 24 hours nor more than 48 hours in advance of transport or receipt. The department has determined that the current notification requirements, which require a game warden at the point of origin and at the destination to be notified "at least 24 hours prior to transport," are problematic because they create an open-ended situation in which transportation could occur at any time following notification, indefinitely. The department believes it is prudent to establish a specific timeframe or window within which transport must occur or be cancelled, in order to prevent situations in which department personnel do not know with reasonable certainty when a regulated activity will occur, which interferes with efficiency and the performance of other duties which could be performed. Additionally, the department believes it is more efficacious to require the notifications to be made to a central location, which allows the department greater flexibility in personnel allocation as well as providing the benefit of creating a single recordkeeping function. Therefore, the proposed new provision would require an alligator farmer to complete and submit to the department's Law Enforcement Communication Center by fax or email a transfer notification on a form supplied or approved by the department, require the notification to be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt, and require cancellation via notification of the Law Enforcement Communications Center by fax or email prior to the transport in the event that the transport cannot take place. Finally, the proposed amendment would alter subsection (e)(2) to replace the current reference to alligators taken on "wildlife management areas" with a reference to alligators taken under "annual public hunting permit," which is more accurate.

The proposed amendment to §65.358, concerning Alligator Egg Collectors, consists of several actions. In addition to the references to department forms addressed earlier in this preamble and a changer to the title of the section to more accurately define the subject of the section, the proposed amendment would require applicants for nest stamp issuance to supply GPS coordinates indicating the locations of alligator nests on a specific tract of land and would restate the department's authority to verify the accuracy of application materials. The department authorizes the collection of eggs from nests on the basis of a biological and ecological determination of the portion of reproductive potential can be removed from the ecosystem as harvestable surplus. The department believes that utilization of widely available and extremely accurate GPS technologies to identify exact nest locations will reduce confusion and misunderstandings caused by more rudimentary methods, as well as provide the department with accurate datasets that provide greater resolution for purposes of better resource management. Under Parks and Wildlife Code, §12.103, an authorized employee of the department may, for purposes of enforcing game and fish laws of the state, enter on any land or water where wild game or fish are known to range or stray. Therefore, the proposed amendment would restate that authority in terms of nest location verification. The proposed amendment also would replace references to egg collection and collecting with references to egg collection activities, for the reasons explained in the discussion of the amendments to §65.352 earlier in this preamble, concerning Definitions. The proposed amendment would also clarify that egg col-

lection activities shall only be conducted on designated tracts of water in addition to designated tracts of land which is more accurate as alligator nests are often located in wetland environments. The proposed amendment also would establish lawful hours for the collection of alligator eggs. For purposes of enhancing the department's ability to monitor egg collection activities, if necessary, and to promote the safety of persons engaged in egg collection activities, the department believes it is prudent to restrict egg collection activities to daylight hours. Therefore, the proposed amendment would prohibit egg collection between sunset and one half-hour before sunrise. Finally, similar to the proposed amendment to §65.357 regarding notification requirements for farmers, and for the same reason addressed in the discussion of that proposed amendment previously in this preamble, the proposed amendment would replace existing notification requirements for egg collection activities with the requirement that egg collectors complete and submit to the department's Law Enforcement Communication Center by fax or email an egg collection activity notification on a form supplied or approved by the department, require the notification to be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt, and require cancellation via notification of the Law Enforcement Communications Center by fax or email prior to the transport in the event that the activity cannot take place.

The proposed amendment to §65.359, concerning Possession, would stipulate that eggs possessed under a farmer's permit must be kept at the permitted farm facility. A farming permit allows the possession, incubation, hatching, and growing of alligators, but it does not authorize egg collection (although farmers may obtain nest authorizations and nest stamps and engage in collection activities); therefore, the proposed amendment makes clear that once an alligator egg is possessed under a farmer's permit, it must remain in the farming facility of the permittee, which is necessary to monitor the movement of alligator eggs from the wild into commercial activities. The proposed amendment would also provide that all meat products processed and packaged, rather that meat products finally processed and packaged, by a farmer or wholesale dealer must be accompanied by an invoice, which is necessary because the amendments to §65.357, concerning Purchase and Sale of Alligators, would allow wholesale dealers to sell partially processed alligators, for reasons discussed in the proposed amendment to §65.352, concerning Definitions. Finally, the proposed amendment would alter the citation to the definition of skull length which in necessary because the citation has changed as the result of the proposed amendments to §65.352, concerning Definitions.

The proposed amendment to §65.360, concerning Report Requirements, would retitle the section Reporting and Recordkeeping, implement the standardized language regarding department forms (discussed previously in this preamble), and replace the quarterly reporting requirement of farmers operating incubation-only facilities with a one-time reporting requirement (also discussed earlier in this preamble). Finally, the proposed amendment would clarify that a wholesale dealer is required to produce a copy of an Alligator Transaction Report only to a department employee acting in the discharge of official duties.

The proposed amendment to §65.361, concerning Alligator Farm Facility Requirements, would implement the standardized language regarding department forms (discussed previously in this preamble), require applications to be accompanies by the GPS coordinates and a map of the prospective facility, require alligators in a farm to be kept within the facility, require set minimum criteria for egg incubators, require hatchlings to be transferred to a farming facility from an incubator-only facility by October 1 of each year, clarify that a hide tag issued to a farming facility may not be used on an alligator killed under and hunting license, and clarify that alligators within an alligator farm may not be hunted for sport. The department believes that utilization of widely available and extremely accurate GPS technologies to identify exact boundaries of alligator farm facilities will reduce confusion and misunderstandings as to the exact geographical area under regulation as an alligator farm; therefore, the amendment would require applicants for an alligator farming permit to supply a map and the GPS coordinates of the facility area. The proposed amendment also would require alligators kept under a farming permit to be retained in the facility. Although it is intuitively obvious that alligator stock should be kept within a facility, it is necessary to stipulate that requirement by rule in order to establish a regulatory duty on the part of permittees to prevent escape. The proposed amendment also would establish environmental control standards for egg incubation facilities. Alligator eggs are a public resource and their collection for commercial purposes is a permit privilege. The department believes that basic environmental control standards should exist in order to prevent possible waste of a public resource; therefore, the proposed amendment would require incubators to be capable of maintaining water and air temperatures of 85 to 91 degrees Fahrenheit on a continuous basis when eggs and hatchlings are present. The proposed amendment also would establish that incubator-only facilities are farming facilities for which a farming permit is required and require hatchlings at such facilities to be transferred to a grow-out farm by October 1 of each year. Although most incubation facilities are located within a grow-out facility, there are incubator-only facilities. The proposed amendment clarifies that such facilities are alligator farms for which a farming permit is necessary. Because such facilities do not meet the facility requirements established by the subchapter for growing alligators to adult size, the proposed amendment would stipulate that all hatchlings be moved once they have achieved hatchling status and are capable of surviving in a grow-out facility. The proposed amendment also would prohibit recreational hunting within alligator farms. The department believes that alligator farms, as commercial entities, should not be engaged in the offering of recreational hunting opportunity, since the alligators in farms are confined and their hunting within a farm would therefore not be fair chase. There are abundant opportunities in Texas for alligator hunting in the wild. Therefore, the proposed amendment would prohibit the use of a hide tag issued to a farming facility to be used on an alligator killed under a recreational hunting license and create an offense for allowing the sale, offering for sale, or the acceptance of such an offer for the killing of alligator within a farming facility. Finally, the proposed amendment also makes various nonsubstantive grammatical and organizational changes.

The proposed amendment to §65.362, concerning Importation and Exportation, would: implement the language regarding department forms (discussed earlier in this preamble); clarify that an alligator import permit is not required for activities authorized under a permit issued under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C; restrict import tag eligibility to wholesale dealers, retail dealers, and farmers; establish a period of validity for an import permit; establish a notification requirement similar to those proposed for live alligator transport and egg collection activities, for the same reasons addressed in those discussions earlier in this preamble; update a reference to a fee amount; and reiterate the prohibition on the export of alligator eggs. Current rules do not specifically identify the

classes of permittees authorized to obtain import tags from the department, although for all practical purposes the rules governing possession of alligators restricts such activities to persons holding wholesale, retail, or farming permits. Similarly, current rules do not state the period of validity for an import permit, although again, for all practical purposes it is connected to the period of validity of the permits that must be possessed in order to engage in the activity, all of which are one year. Therefore, for purposes of clarity, the proposed amendment would restrict the issuance of import permits to persons holding a wholesale, retail, or farming permit and establish a period of validity from the date of purchase until the immediately following August 31. The proposed amendment would also clarify provisions governing possession of alligators taken by sport or recreational license in another state. The intent of the current provision is to exempt recreational hunters from provisions that apply to commercial activity; however, the department has encountered situations in which alligators lawfully taken in another state have been sold to a third party and then introduced to Texas for commercial purposes. The proposed amendment would clarify that an alligator lawfully taken in another state may be brought into Texas without an import permit, but it must be accompanied by evidence of lawful possession or take and cannot have been sold or exchanged for anything of value in return, including for transport or delivery of the alligator.

The proposed amendment to §65.365, concerning Management Tag, would quantify the size of alligators for which a management tag could be used to harvest and update a reference to fee amounts.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of alligator management rules will administer and enforce the rules as part of their current job duties and resources.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection and efficient management of alligator resources in Texas.

There will be minimal, if any, adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact "to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

For purposes of ensuring that this analysis captures the totality of possible affected parties, the department assumes that most, if not all, holders of alligator farming and dealer permits meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006). Based on license sales data for the last three years, the proposed rules would affect an annual average of 13 persons holding an alligator farming permit, 15 persons holding a retail alligator dealer permit, and three persons holding a wholesale alligator dealer permit. The rules as proposed alter methods for reporting and notifications by persons transporting alligators and collecting alligator eggs, stipulates temperature requirements for alligator egg incubators, and requires certain permit applicants to furnish GPS and map data as part of the application process, but otherwise imposes no direct costs on any class of permittee. The department has determined that the changes to notification procedures (email or fax notification to the department's Law Enforcement Communications Center, rather than phone notification of individual game wardens) will not result in a net increase in cost of compliance. Similarly, the requirement that incubators be capable of maintaining specific temperatures will not result in additional costs, as farm permit holders who incubate eggs already have incubators. With respect to requirements for GPS and map data to be included with applications for alligator farm permits and nest authorizations, the department believes that the wide availability and low cost of GPS technology (which is now available on most cell phones) will impose minimal, if any, costs to permittees. There will be no direct adverse economic impacts on rural communities as a result of the proposed rules.

Therefore, the department has determined that neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; create a new regulation (notification requirements for alligator egg collectors and persons transporting live alligators; application requirement for alligator farm permittees and egg collectors; restriction of alligator egg collection to daylight hours; temperature requirements for alligator egg incubators; prohibition of recreational alligator hunting in alligator farm facilities); not expand or repeal an existing regulation; limit an existing regulation (reducing reporting requirements for incubator-only farm facilities); increase the number of individuals subject to regulation (by imposing mandatory check station and carcass movement restrictions in an area where such restrictions are not currently effect, thereby affecting hunters); and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Robert MacDonald, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: Robert.MacDonald@tpwd.texas.gov, or via the department web site at www.tpwd.texas.gov.

The amendments are proposed under the authority of Parks and Wildlife Code, §65.003, which authorizes the commission to regulate taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations to provide for the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator; and control of nuisance alligators.

The proposed amendments affect Parks and Wildlife Code, Chapter 65.

§65.352. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in Subchapter A of this chapter (relating to the Statewide Hunting and Fishing Proclamation) and in the Parks and Wildlife Code.

(1) Alligator--For the purposes of this subchapter, alligator means any American alligator (Alligator mississippiensis), living or dead, or any part of an alligator, including eggs.

(2) Clutch--The number of alligator eggs, both fertile and infertile, in a single alligator nest.

(3) [~~(2)~~] Control hunter--A person authorized by the department to take nuisance alligators.

(4) [~~(3)~~] Consumer--A person who purchases alligators, alligator parts, or products made from alligators for personal use or consumption and who does not sell, resell, trade, or barter the alligators, alligator parts, or products made from alligators in exchange for anything of value.

(5) Egg--An alligator egg.

(6) [~~(4)~~] Egg collection activities--Nest disturbance, removal of eggs, or possession of eggs removed [~~--To remove or possess alligator eggs~~] from wild nests.

(7) [~~(5)~~] Egg collector--A person authorized by the department to collect, possess, or transport alligator eggs.

(8) Export--The physical transportation of an alligator to any point outside the state of Texas.

(9) [~~(6)~~] Farm--A premises where alligators are bred or raised under department-sanctioned conditions.

(10) [~~(7)~~] Farmer--A person who possesses a valid [~~holding an~~] alligator farming permit issued under this subchapter.

[~~(8) Gig--A pole or staff equipped with at least one of the following:~~]

[~~(A) immovable prongs;~~]

[~~(B) two or more spring-loaded grasping arms; or~~]

[~~(C) a detachable head.~~]

(11) [~~(9)~~] Hatchling alligator--Any alligator less than 12 inches in length.

(12) Import--The physical transportation of an alligator from outside of Texas across the state line into Texas.

(13) Nest disturbance--The act of physically manipulating, handling, or tampering with an alligator nest in any way.

(14) Incubation-only facility--An alligator farm where operations are restricted to the incubation and hatching of alligators

(15) [~~(10)~~] Nuisance alligator--An alligator that is depredating or a threat to human health or safety.

(16) Partially processed alligator--A whole alligator that has been skinned except for the head, or a whole alligator that has been skinned except for the head and feet.

(17) [~~(11)~~] Processed product--Any alligator part (and its resulting products, including meat that has been removed from the skeleton) that has been treated to prevent decomposition and/or packaged for sale. [~~Alligator meat is a processed product only if it has been processed and packaged in compliance with all applicable local, state, and federal rules regarding food processing.~~]

[~~(12) Propagation--The holding of live alligators for production of offspring.~~]

(18) [~~(13)~~] Retail dealer--A person possessing a valid retail dealer permit issued under this subchapter [~~who operates a place of business (mobile or permanent) for resale of alligators to the consumer only, except as provided in §65.357 of this title (relating to Purchase and Sale of Alligators)~~].

[~~(14) Subpermittee--A person who is registered with the department to assist a permittee in performing nuisance alligator control activities.~~]

(19) [~~(15)~~] Wholesale dealer--A person possessing a valid wholesale dealer permit issued under this subchapter [~~who operates a place of business (mobile or permanent) for the purpose of buying nonliving alligators for resale, canning, preserving, processing, or handling for shipment or sale~~].

(20) [~~(16)~~] Skull length--the distance from the anterior edge of the premaxilla to the posterior edge of the parietal, measured along the mid-line of the skull.

§65.353. General Provisions.

(a) Except as provided in this subchapter or Subchapter A of this chapter, no person may possess an untagged alligator hide or undocumented alligator part.

(b) Except as provided in this subchapter or Parks and Wildlife Code, Chapter 43, Subchapter C, no [~~No~~] person may possess a live alligator [~~without possessing a valid alligator farming permit, except~~];

[~~(1) as provided in this subchapter or by the Parks and Wildlife Code, Chapter 43, Subchapter C; or~~]

[~~(2) a common carrier or person transporting legally documented live alligators for purposes of shipping the alligators to a final destination that is outside this state~~].

(c) Any person transporting live alligators shall take reasonable precautions to maximize the humane treatment of and minimize stress to the alligators being transported.

(d) No person other than a wholesale dealer or farmer may process alligator meat for purpose of sale.

(e) No alligator egg collected or obtained under authority of this subchapter may be shipped out of state.

(f) Nothing in this subchapter shall be construed to relieve any person from the applicability of any local, state, or federal requirement regarding food safety.

§65.357. Purchase and Sale of Alligators.

(a) Sale by control hunter.

(1) A control hunter may possess a dead alligator indefinitely, but may sell the alligator only to a farmer or wholesale dealer. While in possession of a dead alligator taken under a control contract, a control hunter shall maintain possession of the contract under which the alligator was taken and a copy of the Nuisance Alligator Hide Tag Report on a form supplied or approved by the department [~~(PWD 305)~~]. The control hunter shall present the contract upon request of a department employee acting within the scope of official duties.

(2) A control hunter may temporarily possess a live nuisance alligator, but must sell the alligator to a licensed alligator farmer within 14 days from the time the alligator is first captured.

(b) Purchase and sale by retail dealer.

(1) A retail dealer may purchase an alligator only from a valid wholesale dealer or lawful out-of-state source.

(2) Except as provided in this subchapter, no person may purchase an alligator from a wholesale dealer for the purpose of resale without possessing either a valid retail dealer's permit or a valid wholesale dealer's permit.

(3) Except as provided in this subchapter, no person may sell processed alligator parts such as skulls, feet, or teeth unless that person possesses a valid retail dealer permit.

(4) A person possessing a valid retail dealer permit may sell legally obtained and documented processed alligators only to consumers.

(5) A retail dealer permit is not required of a:

(A) person selling processed products so long as alligator hide is the only alligator part used (e.g., footwear, belts, wallets, luggage, etc.); [~~or~~]

(B) person that sells alligator ready for immediate consumption in individual portion servings; or

(C) person who purchases packaged [~~selling~~] alligator meat from a wholesale dealer, retail dealer, or farmer for re-sale to consumers [~~processed and packaged in accordance with applicable local, state and federal laws governing the processing of food for sale to the public~~].

(6) A retail dealer permit is required for each place of business, mobile or permanent, where activities that require a retail dealer permit are conducted.

(c) Purchase and sale by wholesale dealer.

(1) A person possessing a wholesale dealer permit may sell legally obtained and documented:

(A) [~~legally obtained and documented~~] processed and partially processed alligators to anyone; and

(B) [~~legally obtained and documented~~] unprocessed alligators only to another wholesale dealer or to an alligator farmer.

(2) A wholesale dealer may purchase legally taken alligators from any hunter, dealer, farmer, import permit holder, or control hunter.

(d) Purchase and sale by farmer.

(1) A farmer may purchase:

(A) live [~~or dead~~] alligators from a farmer[~~, wholesale dealer, hunter,~~] or control hunter; and

(B) dead alligators from a farmer, wholesale dealer, recreational hunter, or control hunter; and

(C) [~~(B)~~] alligator eggs only from a person authorized under this subchapter to sell alligator eggs [~~an egg collector~~].

(2) A farmer may sell:

(A) live alligators to another farmer or to the holder of a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter C; and

(B) lawfully documented, unprocessed, dead alligators only to a wholesale dealer or another farmer.

(3) It is an offense for any alligator farmer to:

(A) transport or receive a live alligator unless the alligator farmer has completed and submitted to the department's Law Enforcement Communication Center by fax or email a transfer notification on a form supplied or approved by the department.

(i) The notification required by this subparagraph shall be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt.

(ii) If for any reason the transport or receipt cannot take place after the department has been notified under clause (i) of this subparagraph, the alligator farmer shall contact the department's Law Enforcement Communications Center by fax or email to cancel the notification. The cancellation notice must be received by the department prior to the initiation time indicated on the transport notification under clause (i) of this subparagraph [~~a game warden at the point of origin (if in Texas) and the destination (if in Texas) are notified at least 24 hours prior to transport~~]; or

(B) transport live alligators for exhibition purposes unless authorized by a permit issued under Parks and Wildlife Code, Chapter 43, Subchapter C.

(e) Sale by recreational hunter.

(1) A person who lawfully kills an alligator under a hunting license may sell only to a farmer or wholesale dealer or lawful out-of-state purchaser.

(2) An alligator taken by annual public hunting permit [~~on a wildlife management area~~] may not be sold or bartered for anything of value at any time unless a commercial alligator hide tag has been purchased from the department and attached to the alligator.

§65.358. Alligator Egg Collection [~~Collectors~~].

(a) A landowner [~~Landowners~~] may apply for alligator nest stamps by submitting a completed application for nest stamp issuance [~~Nest Stamp Application (PWD-459)~~] to the department on a form supplied or approved by the department. The application must contain the GPS coordinates of each known alligator nest and a map showing the location and dimensions of the property where the nests are located.

(b) The department may, at its discretion, verify reported nest locations to confirm the accuracy of application materials.

(c) [~~(b)~~] It is unlawful for a landowner to utilize a nest stamp for a tract of land or water other than the tract for which the stamp was originally issued.

(d) [(c)] An alligator egg collector shall conduct egg collection activities [collect] only on the tracts of land or water designated for the stamps in their possession.

(e) [(d)] Alligator eggs shall be collected from the wild only by hand.

(f) [(e)] No person may possess alligator eggs without possessing an egg collection permit or a valid alligator farmer permit.

(g) No person may engage in egg collection activities between sunset and one half-hour before sunrise.

(h) [(f)] When engaged in egg collection activities [collecting], an alligator egg collector must possess on his or her person one or more current nest stamps and an Alligator Nest Stamp Authorization on a form supplied or approved by the department[(PWD-453)]. At least one person in possession of a current nest stamp and nest stamp authorization must be present during all collection activities [in a collecting party must possess a current nest stamp and PWD-453].

(i) [(g)] No person may collect alligator eggs without possessing a valid hunting license.

(j) [(h)] Immediately upon collection and throughout transportation and incubation each clutch of eggs must be accompanied by a completed nest stamp.

(k) No person may engage in egg collection without having completed and submitted to the department's Law Enforcement Communication Center by fax or email an egg collection activity notification on a form supplied or approved by the department. The notification required by this subsection shall be submitted not less than 24 hours nor more than 48 hours prior to beginning egg collection activities. If for any reason egg collection activities cannot take place after the department has been notified under this subsection, the department's Law Enforcement Communications Center shall be contacted by fax or email to cancel the notification. The cancellation notice must be received by the department prior to the initiation time indicated on the egg collection activity notification.

[(i) No less than 24 hours prior to each collection trip, an egg collector shall notify a game warden in the collection area of the date, time, and location of the collection.]

(l) [(j)] An alligator egg collector may sell alligator eggs only to a farmer [farmer(s)] designated by permit.

[(k) No alligator eggs collected or obtained under authority of this subchapter may be shipped out of state.]

§65.359. Possession.

(a) A consumer may possess processed alligators and processed alligator meat products without permit or documentation requirements.

(b) Alligator eggs possessed under a farming permit must be at a farm facility.

(c) [(b)] Except as provided in subsection (a) of this section, all alligators or alligator parts possessed, sold, purchased, exported, or imported shall be accompanied by evidence of lawful take and/or possession. Depending on the applicability of paragraphs (1) - (3) of this subsection, evidence of lawful take shall consist of:

(1) an applicable license or permit number and hide tag issued by the state or country of origin, which shall be firmly attached to an alligator hide. If the alligator hide is boxed or otherwise packaged for transport, the hide must be tagged, but the license or permit may be retained by the person in possession of the alligator, provided it is kept available for inspection by an authorized employee of the department;

(2) a document, tag, or label for each alligator part, except for the hide, that specifies the:

(A) place of origin;

(B) name and address of the seller;

(C) applicable license or permit number that is required by the state or country of origin;

(D) hide tag number of the alligator from which the part originated;

(E) Import Permit number, if imported into Texas; and

(F) date of shipment, if imported into Texas; or

(3) a document, tag, or label affixed to the outside of any package or container of alligators. The label must specify the:

(A) contents;

(B) hide tag number of the alligator from which the parts originated; and

(C) any applicable license or permit numbers.

(d) [(c)] Meat products [finally] processed and packaged by a farmer or wholesale dealer must be accompanied by an invoice or bill of sale that:

(1) specifies the amount of packaged alligator meat by weight; and

(2) identifies the farmer or wholesale dealer from which the packaged meat originated.

(e) [(d)] The documents required in this subsection must accompany individual alligator parts after sale.

(f) [(e)] An individual skull not accompanied by the hide and/or parts of the alligator from which it originated shall be legibly marked with the hide tag number of the alligator from which it originated. The marking shall be in indelible ink on the lower jaw. The provisions of this subsection apply only to skulls of nine inches or greater in length when measured as described in §65.352(20)[§65.352(16)] of this title (relating to Definitions). This subsection does not apply to skulls possessed before the effective date of the subsection.

§65.360. Reporting and Recordkeeping [Report] Requirements.

(a) A Nuisance Alligator Hide Tag Report [(PWD-305)] shall be completed by a control hunter on a form supplied or approved by the department immediately upon take and shall be submitted to the department within seven days. A dealer or person possessing the alligator hide shall retain a copy of the report [PWD-305] until the hide is shipped or sold out of state, at which time the copy shall be forwarded to the department.

(b) A person receiving hide tags from the department shall complete and submit an Annual Hide Target Report on a forms supplied or approved by the department [file an annual report (PWD 370)] accounting for all tags by October 10 following the end of the open season for which tags were issued. Unused tags shall be returned with this report.

(c) A wholesale dealer shall complete and submit an Alligator Transaction Report on a form supplied or approved by the department [file reports (PWD 306)] by October 31 and by the last day of every third month thereafter detailing purchase and sale transactions during the license year. A wholesale dealer shall retain a copy of each report required by this subsection [PWD-306 so filed] for a minimum of two years and shall produce such records upon the request of a department

employee acting in the discharge of official duties [~~demand by the department~~].

(d) A retail dealer shall retain records of all purchases from wholesale dealers for a minimum of two years.

(e) An alligator import permit holder shall complete and submit an Alligator Import Report on a form supplied or provided by the department [~~report all import activities during a reporting period~~] within 30 days following permit period termination.

(f) Except for farmers operating an incubation-only facility under §65.361(e) of this title (relating to Alligator Farm Facility Requirements), a farmer [~~A farmer~~] shall submit quarterly reports on a form supplied or approved by the department [~~(PWD-371)~~] within 15 days of the end of each quarterly period (February, May, August, and November).

(g) A farmer operating an incubation-only facility under the provisions of §65.361(e) of this title shall file an Incubation Summary on a form supplied or approved by the department no later than October 1 of each year.

(h) [~~(g)~~] An alligator egg collector shall complete and submit an Annual Egg Collection Report provided or approved by the department [~~annual report~~] and return all unused nest stamps by October 1 [~~August 31~~] of each year.

(i) [~~(h)~~] All persons to whom hide tags or nest stamps have been issued shall notify the department in writing within 15 days in the event that any tags or stamps are lost, stolen, mutilated, or destroyed. The department will not replace tags or stamps so reported.

§65.361. Alligator Farm Facility Requirements.

(a) An applicant for an Alligator Farming Permit must complete and submit an application on a form supplied or approved by the department. The application must contain the GPS coordinates of the perimeter of the facility and be accompanied by a map showing the location and dimensions of the facility.

(b) [~~(a)~~] Except for an alligator farming permit issued under subsection (e) of this section, a [~~A~~] first-time applicant for an alligator farming [~~farmer's~~] permit must, prior to permit issuance, show evidence of the following during a facility inspection by the department:

(1) adequate barriers to prevent escape or entry by alligators;

(2) a reliable source of clean, fresh water;

(3) provision for protection from the cold, either available denning space or an enclosed, controlled-temperature environment;

(4) pooled water sufficient to allow complete submersion of alligators.

(c) Except as provided under §65.353 of this title (relating to General Provisions) or for live alligators being lawfully transported, a live alligator held under an Alligator Farming Permit must be kept within the facility identified in the application required by subsection (a) of this section at all times.

(d) No farmer may incubate alligator eggs at a farm or incubation-only facility unless the department has approved the incubation apparatus at the farm or incubation-only facility. An incubation apparatus must be capable of maintaining water and air temperatures of 85 to 91 degrees Fahrenheit on a continuous basis when eggs and hatchlings are present.

(e) A person who operates a facility solely for the purpose of incubating and hatching alligator eggs must obtain an alligator farming permit. Alligators hatched in a facility permitted under this subsection must be transferred to an alligator farm meeting the requirements of subsection (a) of this section or an out-of-state facility lawfully able to receive the hatchlings by October 1 of each year.

(f) [~~(b)~~] A person possessing alligator eggs under an alligator farming permit [~~Alligator farmers possessing alligator eggs outside an alligator nest~~] shall hold [~~house~~] such eggs in identifiable original clutch groups in an incubation apparatus [~~facility~~] approved by the department.

(g) [~~(c)~~] Complete written records of all alligator stock shall be kept, including nest stamps for all alligator eggs, shipping tickets, invoices, and bills of lading.

(h) [~~(d)~~] Farmers may collect eggs from nests of captive alligators inside alligator farms at any time, provided each clutch is accompanied by a captive nest stamp provided by the department. Nesting activity of captive alligators shall be recorded on a daily basis. An Alligator Farm Egg Collection Report on a form supplied or approved by the department [~~annual summary of nesting activity (PWD-371A)~~] shall be submitted to the department by September 15 of each year.

(i) [~~(e)~~] An alligator farmer who collects or receives alligator eggs taken from wild nests [~~Farmers possessing alligator eggs collected from the wild~~] shall complete and submit an Annual Egg Report on a form supplied or approved by the department [~~annual report (PWD-371A)~~] to the department by October 1 [~~September 30~~] of each year.

(j) [~~(f)~~] The department may [~~reserves the right to~~] deny permit issuance [~~permits~~] to:

(1) any incubation facility with less than a 70% hatching success over any period of two consecutive years; or

(2) any farm facility with less than a 70% hatchling survival (hatch-to-harvest) over any period of two consecutive years.

(k) [~~(g)~~] All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation.

[~~(h) No alligator eggs collected or obtained under authority of this subchapter may be shipped out of state.~~]

(l) [~~(i)~~] Applications for hide tags [~~(PWD 372)~~] shall be submitted to the department 15 days prior to harvest of alligators, except for non-harvest mortalities, in which case the permittee shall notify a game warden before skinning operations begin.

(m) A hide tag issued to a farming facility may not be used on an alligator killed under a hunting license.

(n) It is an offense for a farmer to sell, offer for sale, or accept or offer to accept anything of value from another person for the killing of an alligator within an alligator farming facility.

§65.362. Importation and Exportation.

(a) Except as may be provided under a permit issued under the authority of Parks and Wildlife Code, Chapter 43. Subchapter C, no [~~No~~] alligator may be imported into this state unless the importer possesses a valid alligator import permit.

(1) An alligator import permit may be obtained by completing and submitting an Alligator Import Permit application on a form supplied or approved by the department and the nonrefundable fee specified in §53.8 of this title (relating to Alligator Licenses, Permits, Stamps, and Tags).

(2) Only the holder of a valid wholesale dealer, retail dealer, or alligator farm permit may obtain an alligator import permit.

(3) An alligator import permit is valid from the date of purchase until the immediately following August 31.

(4) This subsection does not apply to alligators not taken or originating in Texas that are:

(A) shipped by common carrier through this state or to a destination in this state [~~or accompanied by documentation of lawful possession from outside of this state to a destination within this state~~] for immediate shipment outside the state; or

(B) transported by means other than a common carrier through this state from outside of this state to a destination within this state for immediate shipment outside this state, provided the alligators are accompanied by evidence of lawful take and/or possession.

(b) [~~An import permit is required for shipment of live alligators into this state.~~] No person shall import a live alligator under a permit authorized by this subchapter unless that person has notified the department not less than 24 hours or more than 48 hours prior to each instance of importation. Notification shall be by fax or email [~~telephone contact~~] with the department's Law Enforcement Communications Center [~~in Austin~~].

(c) An alligator import permit is not required for an alligator lawfully taken or possessed in another state by sport or recreational hunting license, provided the person who possesses the alligator has not, prior to entering the state of Texas in possession of the alligator, sold the alligator or accepted anything of value in exchange for the alligator or for the transport or delivery of the alligator. A person in possession of an alligator under this section must also possess evidence of valid take and, if the person in possession of the alligator is not the person who took the alligator, valid documentation for the legal transfer of possession to that person. [~~In the case of alligators taken in another state under a sport hunting license, no import permit is required~~].

(d) Legally tagged and documented alligators and alligator parts may be exported from this state by all categories of license and permit holders.

(e) Except as provided in this subchapter, no live alligators shall be exported from Texas without specific departmental authorization. No person shall export an alligator under this subsection unless the export fee specified in §53.8 of this title [~~an alligator export fee of $4.00 per alligator~~] has been paid to the department, except for alligators accompanied by a valid department-issued hide tag.

§65.365. Management Tag[~~--Applicability and Fee~~].

(a) The department may issue management tags to landowners with a department-approved alligator management plan specifying a harvest quota of [~~sub-adult~~] alligators six feet in total length or less. Tags are issued upon:

(1) department approval of an alligator management plan; and

(2) payment of the fee established in §53.8 of this title (relating to Alligator Licenses, Permits, Stamps, and Tags). [~~The fee for management tags is $5.00 per tag.~~]

(b) All provisions of this subchapter pertaining to tags and tagging also apply to management tags.

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 6, 2020.

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Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 389-4775

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.11

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend Title 43 of the Texas Administrative Code (TAC) §217.11, concerning rescission, cancellation, or revocation of an existing title or application by affidavit. The proposed amendment implements a department policy change that removes barriers to Texas businesses, streamlines administrative processes for efficiency, and protects consumers from fraud.

EXPLANATION. The proposed amendment to §217.11(a) extends the deadline to submit to the department an affidavit asking the department to rescind, cancel, or revoke an existing title or application for a title for a vehicle involved in the process of a first sale. The deadline is extended from within 21 days of initial sale to within 90 days of initial sale. By extending the deadline, the department is giving motor vehicle dealers and their customers more time to ask the department to rescind, cancel, or revoke a title to a new motor vehicle in cases where title was applied for in the customer's name, but the dealer, customer, and any lienholder have all agreed to cancel the sale. The proposed amendment does not change any existing sales or contracting requirements under the Transportation Code or Finance Code, but merely extends the deadline to submit an affidavit to the department.

The rescission of title related to a cancelled sale on a new motor vehicle involved in a first sale results in the title record being deleted from the department's title records. This allows a motor vehicle dealer to obtain a duplicate Manufacturer's Certificate of Origin (MCO). Once a dealer has obtained a duplicate MCO, the dealer may treat a subsequent sale to another buyer as a first sale of a new motor vehicle rather than a used car sale, provided the vehicle never left the dealer's possession. Extending of the deadline for title rescission requests eliminates confusion for subsequent purchasers as to whether they purchased a new motor vehicle or a used motor vehicle, while maintaining the true value of a vehicle that has never really been the subject of a first sale.

Transportation Code §501.051 provides the department authority to rescind, cancel, or revoke an application for a title if a notarized or county-stamped affidavit is presented, but does not state a deadline for the affidavit to be presented to the department. By extending the deadline to 90 days, the department is balancing the needs of businesses and consumers. The new deadline provides ample time for businesses to recognize that an affidavit needs to be submitted, while protecting consumers

and preventing fraud by not allowing for sale recessions, cancellations, and revocations to take place indefinitely and having the transactions take place within the administrative process.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. While the extended deadline may increase the number of affidavits the division processes, it is not anticipated that the increase will be significant enough to increase costs at this time. Jeremiah Kuntz, Director of the Vehicle Titles and Registration (VTR) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the amended section is in effect, there are public benefits anticipated from extending the deadline from 21 days to 90 days.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include removing barriers to Texas businesses by extending the deadline for title rescission, cancellation, and revocation and retaining the value of new vehicles that have never left the possession of the dealer. Maintaining the true value of a new vehicle that was never sold or in the possession of the title applicant benefits the public at large and the motor vehicle dealer industry. The proposal will also help prevent fraud by allowing more of these transactions to be processed within the administrative process with department review of the affidavits.

Anticipated Costs to Comply With The Proposal. Mr. Kuntz anticipates that there will be no costs to comply with these rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that during the first five years the proposed amendment is in effect, no government program would be created or eliminated. Implementation of the proposed amendment would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendment does not create a new regulation, or expand, or repeal an existing regulation. The proposed amendment limits an existing regulation by extending the deadline for the rescission, cancelation, or revocation of certain title applications. Lastly, the proposed amendment does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on May 18, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendment is proposed under Transportation Code §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code §501.051, which provides the department authority to rescind, cancel, or revoke an application for a title if a notarized or county-stamped affidavit is presented.

CROSS REFERENCE TO STATUTE. Transportation Code, §503.051 and §1002.001.

§217.11. Rescission, Cancellation or Revocation by Affidavit.

(a) The department may rescind, cancel, or revoke an existing title or application for a title if a notarized or county stamped affidavit is completed and presented to the department within 90 [~~21~~] days of initial sale containing:

(1) a statement that the vehicle involved was a new motor vehicle in the process of a first sale;

(2) a statement that the dealer, the applicant, and any lienholder have canceled the sale;

(3) a statement that the vehicle was:

(A) never in possession of the title applicant; or

(B) in the possession of the title applicant;

(4) the signatures of the dealer, the applicant, and any lienholder as principal to the document; and

(5) an odometer disclosure statement executed by the purchaser of the motor vehicle and acknowledged by the dealer if a statement is made pursuant to paragraph (3)(B) of this subsection to be used for the purpose of determining usage subsequent to sale.

(b) A rescission, cancellation, or revocation containing the statement authorized under subsection (a)(3)(B) of this section does not negate the fact that the vehicle has been subject to a previous retail sale.

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

Filed with the Office of the Secretary of State on April 3, 2020.

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Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 465-5665

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55, 217.58 - 217.64

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55 and new 43 TAC §§217.58 - 217.64. These amended and new sections implement Senate Bill 604, 86th Legislature, Regular Session (2019), which amended Transportation Code Chapter 504 by adding Subchapter B-1 to allow for digital license plates.

EXPLANATION.

§217.22

The proposed amendments to §217.22 are necessary to add definitions that relate to digital license plates.

Proposed new §217.22(11) defines "digital license plate" to create a conforming reference to Transportation Code §504.151.

Proposed new §217.22(12) defines "digital license plate owner" to create a conforming reference to Transportation Code §504.151.

Proposed new §217.22(21) defines "GPS" as a global positioning system (GPS) tracking device to address the collection of information by a receiver in a digital license plate that can determine the location of the digital license plate. GPS features are not expressly addressed in Transportation Code Chapter 504 Subchapter B-1.

Proposed new §217.22(25) defines "legend" to clarify the meaning of the term as it is used in the definition of the phrase "required digital license plate information" in these proposed rules. The term "legend" is defined as a name, motto, slogan, or registration expiration notification appearing on and centered horizontally at the bottom of the license plate. The definition is also necessary to clarify that a digital license plate must display a registration expiration notification.

Proposed new §217.22(27) defines "metal license plate" to differentiate between a metal license plate and a digital license plate.

Proposed new §217.22(30) defines "optional digital license plate information" as any information authorized to be displayed on a digital license plate in addition to required digital license plate information. Proposed new §217.22(30)(A) - (D) list examples of optional digital license plate information.

Proposed new §217.22(31) defines "park" to conform with the statutory meaning in Transportation Code §541.401.

Proposed new §217.22(33) defines "primary region of interest" to describe the size requirements of the alphanumeric character representing the plate number.

Proposed new §217.22(35) defines "required digital license plate information" to clarify the minimum information that must be displayed on a digital license plate. This definition is necessary to clarify that the same information required to be displayed on a metal license plate must also be displayed on a digital license plate: alphanumeric characters representing the plate number, the word "Texas," the legend, the registration expiration notification if the vehicle's registration is expired, and the registration expiration month and year, if applicable. The department has sole control over the design, typeface, color, and alphanumeric pattern for all license plates under Transportation Code §504.005.

Proposed new §217.22(36) defines "secondary region of interest" to describe the size requirements for the field with the word "Texas" centered on the top of the plate.

§217.27

The proposed amendments to §217.27 are necessary to clarify the exclusions for digital license plates from the existing paragraph, and clarify existing requirements for metal license plates. Proposed amended §217.27(a)(2) exempts digital license plates from existing requirements for displaying vehicle registration insignia for certain vehicles without a windshield. Proposed new §217.27(a)(3) clarifies that if a vehicle has a digital license plate, then the expiration month and year will appear digitally on the electronic visual display, and any registration insignia issued by the department must be retained in the vehicle. Vehicles with a digital license plate will be issued a voided registration sticker that will not to be affixed to the windshield. Vehicles with metal license plates that do not have a windshield are issued registration stickers that must be adhered to the rear metal license plate. This amendment provides consistency for law enforcement for metal license plates and digital license plates. The amendment also helps the digital license plate owner because they will have the metal license plate in their vehicle and their registration receipt in the event their digital license plate becomes inoperable or unreadable.

Proposed amendments to §217.27(b)(1) add language clarifying that license plates must be clearly visible, readable, and legible and that the rear license plate must be in an upright horizontal position. These amendments are necessary to assist law enforcement by facilitating a quicker replacement of license plates that have become unreadable or illegible due to age or wear and to facilitate enforcement when a license plate is not placed on the vehicle in an upright position. These amendments also help ensure that license plates are readable and legible as required by §217.32, as well as Transportation Code §§502.475, 504.155(b)(2), and 504.945.

§217.32

The proposed amendments to §217.32 are necessary to differentiate between metal license plates and digital license plates. Proposed amended §217.32(a) - (b) add "metal" and "metal license plate" to differentiate between metal license plates and digital license plates. A replacement digital license plate will be obtained from a digital license plate provider, rather than from a county tax assessor-collector.

§217.38

The proposed amendment to §217.38 is necessary to differentiate between metal license plates and digital license plates. Proposed amended §217.38(1) adds "metal" to differentiate between metal license plates and digital license plates. The customer is not required to return the digital license plate to the county tax assessor-collector when applying for a registration fee credit.

§217.41

The proposed amendments to §217.41 are necessary to differentiate between metal license plates and digital license plates. A replacement digital license plate will be obtained from a digital license plate provider, rather than from a county tax assessor-collector.

§217.55

The proposed amendments to §217.55 are necessary to differentiate between metal license plates and digital license plates. Amended §217.41(c)(1) and (2) add "metal license plate" to differentiate between metal license plates and digital license plates. A replacement digital license plate will be obtained from a digital license plate provider, rather than from a county tax assessor-collector.

§217.58

Proposed new §217.58 lists the types of vehicles that are eligible and ineligible for a digital license plate and the requirements for eligibility verification and issuance of digital plates. Proposed new §217.58(a) lists the statutorily-eligible vehicles as any vehicle owned or operated by a governmental entity, any commercial fleet vehicle, or a truck, motorcycle, moped, trailer, semitrailer, or sport utility vehicle that is not registered as a passenger vehicle.

Proposed new §217.58(b) clarifies that a passenger vehicle is ineligible for a digital license plate, unless the vehicle is owned or operated by a governmental entity or registered as a commercial fleet vehicle. Proposed new §217.58(b) clarifies that any vehicles that are only required to display a metal license plate on the front of the vehicle are ineligible for a digital license plate because they are not required to have a rear license plate. New §217.58(a) - (b) are necessary to clarify which vehicles are eligible and not eligible for a digital license plate under Transportation Code §504.154.

Proposed new §217.58(c) outlines the requirements for eligibility verification and issuance of a digital license plate. Proposed new §217.58(c)(1) clarifies the steps that must be taken if an applicant for a digital license plate has not registered their vehicle in Texas. The digital license plate applicant must register the vehicle in Texas in their name before the applicant may be issued a digital license plate. If they have not already registered, the applicant must register at the county tax assessor-collector's office or the department, depending on the type of vehicle. The department will then issue the applicant one or two metal license plates, depending on the type of vehicle. A person can only apply to the department for the following types of vehicle registration: 1) commercial fleet vehicle registration under Transportation Code §502.0023; 2) apportioned vehicle registration under Transportation Code §502.091; 3) forestry vehicle registration under 43 TAC 217.46(b)(5); and 4) five-year rental trailer registration under 43 TAC §217.46(d)(1)(B)(i). A person can apply at the county tax assessor-collector's office for all other types of vehicle registration. A person can apply at either the department or the county tax assessor-collector's office for the following types of vehicle registration: 1) extended trailer registration under Transportation Code §502.0024; and 2) token trailer registration under Transportation Code §502.255. Proposed new §217.58(c)(2) requires a digital license plate provider to obtain the last four digits of the vehicle identification number and the existing metal license plate number from the digital license plate applicant. Proposed new §217.58(c)(2) is necessary to ensure that the digital license plate provider has all the information necessary to confirm eligibility for a digital license plate. Proposed new §217.58(c)(3) prohibits a digital license plate provider from issuing a digital license plate if the digital license plate applicant has not registered the vehicle in Texas in their name. Proposed new §217.58(c)(4) requires that any metal license plates issued by the department must be carried in or on the vehicle at all times when using a digital license plate. Proposed new §217.58(c)(5) clarifies that only one digital license plate may be issued per eligible vehicle during a single registration period. Proposed new §217.58(c) is necessary to ensure that digital license plate providers and applicants are aware that registration is completed separately from digital license plate issuance and that all digital license plate owners are issued their metal license plates to attach to the vehicle in case of digital license plate removal or malfunction.

§217.59

Proposed new §217.59 outlines the requirements for digital license plate testing. Proposed new §217.59 requires a digital plate provider to provide the department with documentation demonstrating that testing was completed on a digital license plate model before the approval and initial deployment of that digital license plate model, and for each subsequent hardware upgrade. A hardware upgrade is any upgrade to any physical aspects of the digital license plate except for the mounting bracket. The documentation demonstrating that testing was completed must be sufficient for the department to be assured that the digital license plate approved for use was tested in a manner set forth by the department. The documentation must include a description of the testing protocols and methods and must be conducted by governmental entities, universities, or independent nonprofit research and development organizations. Proposed new §217.59 is necessary to ensure that digital license plates meet the statutory requirements for license plates and that the testing is conducted by the types of organizations with which the department has established relationships. The department works with these types of entities on a regular basis for different projects, and requiring these types of entities to perform testing will ensure consistency and independence in testing. The testing must be conducted for four separate issues: reflectivity, legibility, readability, and network and data security. Proposed new §217.59(1) requires reflectivity testing with results that are consistent with the International Organization for Standardization ISO 7591, clauses 6 and 7. This requirement is necessary to be consistent with metal license plates and to comply with the requirement in Transportation Code §504.005(d), which promotes highway safety by requiring that each license plate is made with a reflectorized material that provides effective and dependable brightness for the period for which the plate is issued. Proposed new §217.59(2) requires legibility testing with results demonstrating that digital license plates are legible during daytime and also during nighttime using low beam headlights, under optimal conditions, at a distance of no less than 75 feet. Proposed new §217.59(2) also requires readability testing with results demonstrating that digital license plates are readable with commercially-available automated license plate readers, and in a variety of weather conditions. This is necessary to comply with the industry standard and to comply with the requirement that the digital license plate display be legible under Transportation Code §504.155(b)(2); to ensure that law enforcement can read the digital license plate to determine compliance with Transportation Code §504.945; and to ensure that law enforcement and toll entities can read the digital license plates with commercially-available automated license plate readers. Proposed new §217.59(3) requires commercially-available penetration testing for protection of the digital license plate, the electronic display information, and the digital license plate provider's systems. The penetration testing will be decided by the department and the provider in the contracting process. Proposed new §217.59(3) is necessary to ensure the safety and security of the digital license plates for the benefit of the digital license plate owner, law enforcement, and the public. If the digital license plate or the provider's system

are vulnerable to penetration, this could enable fraud and jeopardize public safety. In addition to testing before initial approval and each subsequent hardware upgrade, penetration testing must be completed for each software or firmware upgrade. This requirement is necessary to ensure that new vulnerabilities are not instituted in subsequent updates.

§217.60

Proposed new §217.60 outlines the specifications and requirements for digital license plates. Proposed new §217.60(a) requires digital license plate providers to ensure that the digital license plate meets or exceeds the benefits to law enforcement provided by metal license plates. This requirement is necessary to conform to the statutory requirement in Transportation Code §504.155(b)(4). Proposed new §217.60(a)(1), Paragraphs §217.60(a)(1) - (4) provide further requirements for the digital license plate. Paragraph §217.60(a)(1) outlines the physical requirements for a digital license plate. Paragraph §217.60(a)(2) requires that the digital license plate include one or more security features that verify the plate was issued by an approved digital license plate provider. Paragraph §217.60(a)(2) is necessary to provide benefits to law enforcement by allowing them to visually ensure that a digital license plate is not a counterfeit. Metal license plates have two security features that law enforcement can visually check to see if the metal license plate is counterfeit. Paragraphs §217.60(a)(3) - (4) require a digital license plate to display the same information as a metal license plate while not in park. This includes displaying required digital license plate information and the registration expiration month and year in the same font size and location as the information displayed on the corresponding metal license plate; as well as ensuring that the required information continues to display when the digital license plate is not connected to a wireless network. These requirements are necessary to fulfill the requirement under Transportation Code §504.155 for the board of the Texas Department of Motor Vehicles (board) to set the specifications and requirements for digital license plates. By setting consistent standards and features, the department is aiding law enforcement by preventing fraud and aiding consumers by ensuring their digital license plate displays the information required by law.

Proposed new §217.60(b) outlines the requirements for placement of a digital license plate and the vehicle registration insignia for a vehicle displaying a digital license plate. Proposed new §217.60(b)(1) requires that the digital license plate must be attached to the exterior rear of the vehicle. This requirement is necessary to comply with the definition of digital license plate defined in Transportation Code §504.151, which states that a digital license plate is designed to be placed on the rear of a vehicle in lieu of a physical, metal license plate. This requirement is also necessary to comply with Transportation Code §504.154(a), which states a digital license plate is placed on the rear of the vehicle in lieu of a physical, metal license plate. Proposed new §217.60(b)(2) requires a metal license plate to be attached to the exterior front of the vehicle, unless the vehicle is not required to display a plate on the front of the vehicle under this chapter. This requirement is necessary to comply with the requirements in Transportation Code §504.943 and 43 TAC §§217.27(b), 217.46(b)(3), and 217.56(c)(2)(E). Proposed new §217.60(b)(3) requires that the vehicle's registration insignia for validation of registration must be displayed in accordance with 43 TAC §217.27. Owners of vehicles with digital license plates will keep their registration receipt in or on the vehicle, and their registration month and year will be displayed on the electronic visual display of the digital license plate. Proposed new §217.60(b)(3) is necessary to provide consistency for law enforcement and limit fraud.

§217.61

Proposed new §217.61 outlines the prohibitions and requirements for digital plate designs and display. Proposed new §217.61(a)(1) prohibits digital license plate providers from creating or designing a specialty license plate under Transportation Code Chapter 504 unless they have a contract with the department under Transportation Code §504.851. This is necessary to ensure that the department is aware of and approves all specialty license plates in the state of Texas. If specialty plates were created without the department's knowledge and approval it would be difficult to verify the legitimacy of the license plates. Proposed new §217.61(a)(2) requires the digital license plate provider to enter into a licensing agreement, with standard language as approved by the department, for the display of any third party's intellectual property on a digital license plate. Proposed new §217.61(a)(2) is necessary to protect third-party intellectual property.

Proposed new §217.61(b) outlines the requirements for the display of information on a digital license plate. Proposed new §217.61(b)(1) requires that the display of electronic information on a digital license plate be approved by the department. Proposed new §217.61(b)(1) provides that the digital license plate may not be personalized under any field of interest except under current rules governing specialty license plates, vehicle registration insignia for vehicles without a windshield, and proposed new §217.61 which permits the display of certain information on a digital license plate. Proposed new §217.61(b)(1) is necessary to maintain consistency between digital license plates and metal license plates which assists law enforcement by ensuring that the digital license plate information is readable and legible. Proposed new §217.61(b)(2) - (4) describe the requirements for the display of optional digital information while the vehicle is in park. These requirements are necessary to permit digital license plates to display an emergency alert, public safety alert, manufacturer or safety recalls, advertising or parking permits, while ensuring that the required digital license plate information remains legible and readable for law enforcement when the vehicle is not in park. This requirement is also necessary to permit optional digital license plate information to be displayed while ensuring that the required digital license plate information remains legible and readable for law enforcement. Proposed new §217.61(b)(5) permits the digital license plate provider to electronically collect tolls with approval by and agreement with the appropriate toll entity. Proposed new §217.61(b)(5) provides a possible benefit to digital license plate owners.

Proposed new §217.61(c) requires that digital license plate providers display an expiration message on the digital license plate if registration has not been renewed at the time of registration expiration, and that the expiration message may not be removed until after the department confirms renewal of expired registration and clarifies that optional digital license plate information may not encroach on the primary and secondary regions of interest. Proposed new §217.61(c) is necessary because Transportation Code §504.155(b)(4) requires a digital license plate to provide benefits to law enforcement that meet or exceed the benefits provided by a metal license plate.

Proposed new §217.61(d) prohibits digital license plate providers from displaying vehicle manufacturer safety recall notices or advertising on a digital license plate without authorization from the digital license plate owner. This is necessary to

ensure that the digital license plate does not display this optional digital license plate information without the owner's approval. For example, a person who graduated from a university might not like it if they were required to display the logo of a rival university on their license plate. Proposed new §217.61(d)(2) - (3) discusses the disclosure of GPS data. The digital license plate provider may not disclose GPS data to any person unless it explains to the digital license plate owner how the GPS data will be used and to whom it will be disclosed, and the digital license plate owner consents to its disclosure. This is necessary to protect the privacy and safety of digital license plate owners. Additionally, the department's Vehicle Titles and Registration Advisory Committee recommended these disclosure requirements and their recommendation was adopted by the board at its February 6, 2020, board meeting. Proposed new §217.61(d)(4) prohibits the digital license plate provider from requiring the owner to authorize the display of optional digital plate information or the disclosure of GPS data as a condition of purchase of lease of a digital license plate. This is necessary to protect the digital license plate owner's right to decide whether to opt in. Proposed new §217.61(d)(5) and (d)(6) require the digital license plate provider to immediately discontinue the display of optional digital license plate information at the digital license plate owner's request and to have the same mechanism for opting in and out of the display of the optional digital license plate information. This requirement is necessary to allow the digital license plate owner a consistent way to opt out of the display of optional digital license plate information on their digital license plate after they have opted in.

§217.62

Proposed new §217.62 outlines the requirements for a digital license plate provider if a digital license plate is removed or malfunctions. Proposed new §217.62(a) requires that the digital license plate provider have a mechanism to prevent theft and tampering with the digital license plate. Proposed new §217.62(a)(1) and (a)(2) require the digital license plate provider to ensure that the digital license plate ceases the display of required digital license plate information in case of malfunction, if service is terminated, or if it determines that the digital license plate has been compromised, tampered with, or fails to maintain the integrity of registration data. Proposed new §217.62(a) is necessary to prevent fraud and protect consumers if their digital license plate is stolen.

Proposed new §217.62(b) outlines when the digital license plate provider must notify the department. Proposed new §217.62(b)(1) - (4) require digital license plate providers to immediately notify the department in case of digital license plate commencement of service, termination of service, determination that the digital license plate has been compromised, or the digital plate transfer to a new owner. These requirements are necessary to ensure that the department has accurate and current data on the digital license plates.

Proposed new §216.62(c) permits a digital license plate provider to disable the display of a digital license plate if the digital license plate owner fails to pay the provider's fees. This is necessary to allow a digital license plate provider to discontinue service when the digital license plate owner is not paying the fees required by their contract.

§217.63

Proposed new §217.63 outlines the digital plate fees and payment. Proposed new §217.63(a) requires that a person applying for a digital license plate must pay an administrative fee of $95.00 upon application for a digital license plate and annually on renewal of registration for a vehicle with a digital license plate. The fee will be aligned with the registration period and adjusted to yield the appropriate fee. The administrative fee is necessary to recoup the department's costs to implement and then administer the digital license plate program for the first five years. The implementation and administration cost is estimated to be $1.8 million. The breakdown of this estimate is as follows:

Programming - Information Technology: $1,036,550

Program Specialists (two FTEs): $815,625

IMPLEMENTATION COST: $1,852,175 Total

To determine an administrative fee, the total estimated implementation cost was divided by the number of digital license plates issued in California (1,300 plates total), since that is the only jurisdiction with a digital plate program that has been operational for several years. That amount was divided by fifteen with the goal of recouping the implementation and administration cost in approximately fifteen years. The amount of the fee and the time of its collection were recommendations from the department's Vehicle Titles and Registration Advisory Committee, and the recommendations were adopted by the board at its February 6, 2020, board meeting. Proposed new §217.63(a)(3) clarifies that a digital license plate administrative fee will be refunded only when registration fees are overcharged under Transportation Code §502.195. This is necessary to inform consumers of when a refund will be issued.

Proposed new §217.63(b) clarifies that the $95 administrative fee is due upon receipt of an application for a digital license plate and annually on renewal of registration for a vehicle with a digital license plate. This is necessary to ensure that the fees for digital license plates are being paid and timely deposited into the state treasury under Government Code §404.094. It also clarifies that a digital license plate provider that collects the administrative fee must submit payment of the fee to the department in full on behalf of the digital license plate owner.

§217.64

Proposed new §217.64 outlines the services that a digital license plate provider is required to provide, including digital license plate replacement when necessary. Proposed new §217.64(a)(1) requires a digital license plate provider to provide customer support for customers during standard business hours, Central Time. This requirement is necessary to ensure that customers can access support if they have issues with their digital plate and it corresponds to the hours that customer service is available for a metal license plate. Proposed new §217.64(a)(2) clarifies that a customer must go to the digital plate provider for repair, service, and replacement of a digital license plate. This clarification is necessary so that customers are aware of who to contact in case an issue arises with their digital license plate.

Proposed new §217.64(b) informs the customer where they can obtain a replacement license plate. Proposed new §217.64(b)(1) clarifies that if a customer wants a replacement digital license plate they can obtain one from the provider. Proposed new §217.64(b)(2) permits the customer to install the rear metal license plate issued for the vehicle in lieu of the digital license plate. Proposed new §217.64(b)(3) explains how to obtain a replacement metal license plate. Proposed new §217.64(b) is necessary because customers need to know where to obtain re-

placement plates if their digital license plate malfunctions or is destroyed, or if their metal license plate is lost, stolen, mutilated, or needs to be replaced for cosmetic or readability reasons. Digital plate owners cannot operate their vehicle until the digital license plate is repaired or replaced, or until they remove the digital license plate and replace it with a metal license plate.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years these rules will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The legislature appropriated money to the department to cover the initial costs of implementing and administering the digital license plate program, which include costs to program the Registration and Title System and the cost of additional staff to monitor the new digital license plate providers to ensure compliance with Texas Transportation Code §§504.151-504.156 during the first five years of implementation and administration. The legislature also authorized the department to charge an administrative fee to recoup these costs, and the department proposes a $95 administrative fee to recoup the state's costs in approximately 15 years. Jeremiah Kuntz, Director of the Vehicle Titles and Registration (VTR) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the amended and new sections are in effect, there are public benefits anticipated from authorizing digital plates.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include an enhanced awareness of emergency alerts and public safety alerts issued by governmental entities to include Amber Alerts, Silver Alerts, and Blue Alerts; and the creation of a new industry in the state of Texas that may have positive economic impact. Technological advancement in registration display will serve to benefit law enforcement through automated expiration notification. Further, the proposal will provide the public with another license plate option, which includes amenities that aren't available with a metal license plate, such as the toll tag or the electronic display of a parking permit.

Anticipated Costs to Comply With The Proposal. Mr. Kuntz anticipates that there will be costs to comply with these rules. While there is no requirement for vehicles to display a digital license plate (rather than a metal license plate), if a consumer chooses to obtain a digital license plate, the rule establishes a $95 administrative fee upon initial application and each year on vehicle renewal. Transportation Code §504.154(d)(2) authorizes the department to establish a fee in an amount necessary to cover any administrative costs. The additional optional cost to persons who want to obtain a digital license plate under the proposal will be based on the price point set by the digital license plate provider(s), and are unknown to the department at this time.

Additionally, there may be costs for the digital plate provider associated with entering the Texas market including performing the required testing if the digital plate provider has not already done so. These costs are unknown to the department at this time.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), the department has determined that these sections will have an adverse economic effect economic impact on small or micro businesses if such businesses choose to purchase a digital license plate and are therefore required to pay the department a $95 administrative fee. In accordance with Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

It is not feasible to determine the number of small or micro businesses that might desire a digital license plate. Further, no small or micro business is required to purchase a digital license plate. Currently the department proposes to charge a $95 administrative fee upon initial application for the digital license plates and annually on renewal of registration. The fee is the same amount that will be charged for individuals that obtain a digital license plate, which is reasonable and necessary to implement the digital license plate program.

The department considered the following other regulatory methods to accomplish the objectives of the digital license plate program while minimizing any adverse impact on small and micro businesses: (i) not proposing the administrative fee; (ii) proposing a different administrative fee for small and micro businesses; and (iii) exempting small and micro businesses from the administrative fee.

Not proposing the $95 administrative fee would not allow the department to recover its cost in implementing the digital license plate program. In authorizing the fee in Transportation Code §504.154, the legislature was aware if a small or microbusiness wanted to obtain a digital license plate, they would be required to pay the fee. The department rejects this option.

Proposing a different administrative fee for small and micro businesses is not contemplated by Transportation Code §504.154. The legislature did not specifically authorize different fees based on business size or model. Costs associated with implementing the digital license plate program, do not vary by business size. Varying the fee for small and micro businesses would result in either increasing the fee for other businesses and individuals or not recovering the full cost of the program. The Department rejects this option.

Exempting small and micro businesses from the administrative fee would inequitably shift the cost to others. As previously noted, the current methodology is already the most equitable methodology the department can develop. The department rejects this option.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or equitable to waive or modify the proposed administrative fee for small and micro businesses.

The department has determined that the proposal will not have an adverse economic effect on rural communities. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the

proposed amendments and new sections are in effect, the proposed rule:

will not create or eliminate a government program;

will not require the creation of new employee positions or the elimination of existing employee positions;

will not require an increase or decrease in future legislative appropriations to the department;

will require an increase in fees paid to the department by charging a $95 administrative fee on initial application and an annual $95 administrative fee with registration for digital plate use;

will create new regulations in §§217.58 - 217.64 to implement Transportation Code Chapter 504, Subchapter B-1, concerning digital license plates, enacted in SB 604;

will expand existing regulations §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55 to implement Transportation Code Chapter 504, Subchapter B-1, concerning digital license plates;

will not repeal existing regulations;

will increase the number of individuals subject to the rule's applicability, because rules concerning digital license plates do not currently exist, but are required under Transportation Code Chapter 504, Subchapter B-1; and

will likely have a positive impact on the Texas economy by authorizing a new industry in Texas.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on May 18, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendments and new sections are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §§504.151-504.157 which authorize digital license plates while giving the department rulemaking authority to implement the statutory provisions including setting specifications and requirements for digital plates and establishing a fee.

CROSS REFERENCE TO STATUTE. Transportation Code, §§504.151- 504.157 and §1002.001.

§217.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affidavit for alias exempt registration--A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

(2) Agent--A duly authorized representative possessing legal capacity to act for an individual or legal entity.

(3) Alias--The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

(4) Alias exempt registration--Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

(5) Axle load--The total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(6) Border commercial zone--A commercial zone established under Title 49, C.F.R., Part 372 that is contiguous to the border with Mexico.

(7) Bus--A motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the operator; or a motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

(8) Carrying capacity--The maximum safe load that a commercial vehicle may carry, as determined by the manufacturer.

(9) Character--A numeric or alpha symbol displayed on a license plate.

(10) County or city civil defense agency--An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

(11) Digital license plate--As defined in Transportation Code, §504.151.

(12) Digital license plate owner--A digital license plate owner is a person who purchases or leases a digital license plate from a department-approved digital license plate provider.

(13) [~~(11)~~] Director--The director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles.

(14) [~~(12)~~] Division--Vehicle Titles and Registration Division.

(15) [~~(13)~~] Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

(16) [~~(14)~~] Exempt agency--A governmental body exempted by statute from paying registration fees when registering motor vehicles.

(17) [~~(15)~~] Exempt license plates--Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

(18) [~~(16)~~] Exhibition vehicle--

(A) An assembled complete passenger car, truck, or motorcycle that:

(i) is a collector's item;

(ii) is used exclusively for exhibitions, club activities, parades, and other functions of public interest;

(iii) does not carry advertising; and

(iv) has a frame, body, and motor that is at least 25-years old; or

(B) A former military vehicle as defined in Transportation Code, §504.502.

(19) [~~(17)~~] Fire-fighting equipment--Equipment mounted on fire-fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

(20) [~~(18)~~] Foreign commercial motor vehicle--A commercial motor vehicle, as defined by 49 C.F.R. §390.5, that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

(21) GPS--A global positioning system tracking device that can be used to determine the location of a digital license plate through data collection by means of a receiver in a digital license plate.

(22) [~~(19)~~] Highway construction project--That section of the highway between the warning signs giving notice of a construction area.

(23) [~~(20)~~] International symbol of access--The symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress of Rehabilitation of the Disabled.

(24) [~~(21)~~] Legally blind--Having not more than 20/200 visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(25) Legend--A name, motto, slogan, or registration expiration notification that is centered horizontally at the bottom of the license plate.

(26) [~~(22)~~] Make--The trade name of the vehicle manufacturer.

(27) Metal license plate--A non-digital license plate issued by the department under Transportation Code Chapter 502 or Chapter 504.

(28) [~~(23)~~] Nonprofit organization--An unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Business Organizations Code.

(29) [~~(24)~~] Nominating State Agency--A state agency authorized to accept and distribute funds from the sale of a specialty plate as designated by the nonprofit organization (sponsoring entity).

(30) Optional digital license plate information--Any information authorized to be displayed on a digital license plate in addition to required digital license plate information when the vehicle is in park, including:

(A) an emergency alert or other public safety alert issued by a governmental entity, including an alert authorized under Subchapter L, M, or P of Government Code Chapter 411;

(B) vehicle manufacturer safety recall notices;

(C) advertising; or

(D) a parking permit.

(31) Park--As defined in Transportation Code, §541.401.

(32) [~~(25)~~] Political subdivision--A county, municipality, local board, or other body of this state having authority to provide a public service.

(33) Primary region of interest--The field on a metal or digital license plate with alphanumeric characters representing the plate number. The primary region of interest encompasses a field of 5.75 inches in width by 1.75 inches in height on metal license plates manufactured for motorcycles, mopeds, golf carts, or off-highway vehicles. The primary region of interest encompasses a field of 8.375 inches in width by 2.5625 inches in height on metal license plates manufactured for all other vehicles.

(34) [~~(26)~~] Registration period--A designated period during which registration is valid. A registration period begins on the first day of a calendar month and ends on the last day of a calendar month.

(35) Required digital license plate information--The minimum information required to be displayed on a digital license plate: the registration expiration month and year (unless the vehicle is a token trailer as defined by Transportation Code, §502.001), the alphanumeric characters representing the plate number, the word "Texas," the registration expiration notification if the registration for the vehicle has expired; and the legend (if applicable).

(36) Secondary region of interest--The field on a metal or digital license plate with the word "Texas" centered horizontally at the top of the plate. The secondary region of interest encompasses a field of 2.5 inches in width by 0.5625 inches in height on metal license plates manufactured for motorcycles, mopeds, golf carts, or off-highway vehicles. The secondary region of interest encompasses a field of 6 inches in width by 1.9375 inches in height on metal license plates manufactured for all other vehicles.

(37) [~~(27)~~] Service agreement--A contractual agreement that allows individuals or businesses to access the department's vehicle registration records.

(38) [~~(28)~~] Specialty license plate--A special design license plate issued by the department under SA.

(39) [~~(29)~~] Specialty license plate fee--Statutorily or department required fee payable on submission of an application for a specialty license plate, symbol, tab, or other device, and collected in addition to statutory motor vehicle registration fees.

(40) [~~(30)~~] Sponsoring entity--An institution, college, university, sports team, or any other non-profit individual or group that desires to support a particular specialty license plate by coordinating the collection and submission of the prescribed applications and associated license plate fees or deposits for that particular license plate.

(41) [~~(31)~~] Street or suburban bus--A vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to a municipality.

(42) [~~(32)~~] Tandem axle group--Two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

(43) [~~(33)~~] Unconventional vehicle--A vehicle built entirely as machinery from the ground up, that is permanently designed to perform a specific function, and is not designed to transport property.

(44) [~~(34)~~] Vehicle classification--The grouping of vehicles in categories for the purpose of registration, based on design, carrying capacity, or use.

(45) [~~(35)~~] Vehicle description--Information regarding a specific vehicle, including, but not limited to, the vehicle make, model year, body style, and vehicle identification number.

(46) [~~(36)~~] Vehicle identification number--A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

(47) [~~(37)~~] Vehicle inspection sticker--A sticker issued by the Texas Department of Public Safety signifying that a vehicle has passed all applicable safety and emissions tests.

(48) [~~(38)~~] Vehicle registration insignia--A license plate, symbol, tab, or other device issued by the department evidencing that all applicable fees have been paid for the current registration period and allowing the vehicle to be operated on the public highways.

(49) [~~(39)~~] Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, model year, body style, license number, and the name of the registered owner.

(50) [~~(40)~~] Volunteer fire department--An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§217.27. Vehicle Registration Insignia.

(a) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on or kept in the vehicle for which the registration was issued for the current registration period.

(1) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield in a manner that will not obstruct the vision of the driver, unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1.

(2) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(3) If the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, the registration receipt, symbol, tab, or other device prescribed by and issued by the department must be retained with the vehicle and may provide the record of registration for vehicles with a digital license plate. The expiration month and year must appear digitally on the electronic visual display of the rear digital license plate.

(4) [~~(3)~~] If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(A) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(B) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(b) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(1) must display two license plates that are clearly visible, readable, and legible, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in an upright [a] horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible, readable, and legible; or

(2) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer.

(c) Each vehicle registered under this subchapter must display license plates:

(1) assigned by the department for the period; or

(2) validated by a registration insignia issued by the department for a registration period consisting of 12 consecutive months at the time of application for registration, except that:

(A) trailers, semitrailers, or pole trailers not subject to inspection under §548.052(3) may obtain a registration insignia for a period consisting of 12, 24, 36, 48 or 60 consecutive months on payment of all fees for each full year of registration; and

(B) vehicles may be registered for 24 consecutive months in accordance with Transportation Code, §548.102 on payment of all fees for each year of registration, regardless of the number of months remaining on the inspection at the time of registration, provided:

(i) the vehicle receives a two-year inspection under Transportation Code, §548.102; and

(ii) the application for registration is made in the name of the purchaser under Transportation Code, §501.0234.

(d) The department may cancel any personalized alpha-numeric pattern that was issued if the department subsequently determines or discovers that the personalized license plate was not in compliance with these guidelines when issued, or if due to changing language usage, meaning or interpretation, the personalized license plate has become non-compliant with these guidelines. When reviewing a personalized alpha-numeric pattern, the department need not consider the applicant's subjective intent or declared meaning. The department will not issue any license plate containing an alpha-numeric pattern that meets one or more of the following criteria.

(1) The alpha-numeric pattern conflicts with the department's current or proposed regular license plate numbering system.

(2) The director of the department's Vehicle Titles and Registration Division or the director's designee finds that the personalized alpha-numeric pattern, including plate patterns that feature foreign or slang words or phrases, use phonetic, numeric or reverse spelling, acronyms, patterns viewed in mirror image, or use a code which only a small segment of the community may be able to readily decipher, that may be considered objectionable or misleading, including that the pattern may be viewed as, directly or indirectly:

(A) indecent (defined as including a reference or connotation to a sexual act, sexual body parts, excrement, or bodily fluids or functions. Additionally, "69" formats are prohibited unless used in combination with the vehicle make, for example, "69 CHEV".);

(B) a vulgarity (defined as profane, swear, or curse words);

(C) derogatory (defined as an expression that is demeaning to, belittles, or disparages any person, group, race, ethnicity, nationality, gender, sexual orientation, or refers to an organization that advocates such expressions);

(D) a reference to race, ethnicity, gender or sexual orientation whether the reference is derogatory or not;

(E) a reference to gangs, illegal activities, violence, implied threats of harm, or expressions that describe, advertise, advocate, promote, encourage, glorify, or condone violence, crime or unlawful conduct;

(F) a reference to illegal drugs, controlled substances, the physiological state produced by such substances, intoxicated states,

or references that may express, describe, advertise, advocate, promote, encourage, glorify such items or states;

(G) a representation of, or reference to, law enforcement, military branches, or other governmental entities and their titles, including any reference to public office or position, military or law enforcement rank or status, or any other official government position or status; or

(H) deceptively similar to a military, restricted distribution, or other specialty plate.

(3) The alpha-numeric pattern is currently issued to another owner.

(4) Notwithstanding the limitations on issuance of plate patterns in this subsection, the department may issue patterns that refer to publicly and privately funded institutions of higher education, including military academies, whether funded by state or federal sources, or both.

(e) A decision to cancel or not issue a personalized alpha-numeric pattern under subsection (d) of this section may be appealed to the executive director of the department or the executive director's designee within 20 days of notification of the cancellation or non-issuance. All appeals must be in writing and the requesting party may include any written arguments, but shall not be entitled to a contested case hearing. The executive director or the executive director's designee will consider the requesting party's arguments and issue a decision no later than 30 days after the submission of the appeal, unless additional information is sought from the requestor, in which case the time for decision is tolled until the additional information is provided. The decision of the executive director or the executive director's designee is final and may not be appealed. An appeal is denied by operation of law 31 days from the submission of the appeal, or if the requestor does not provide additional requested information within ten days of the request.

(f) The provisions of subsection (a) of this section do not apply to vehicles registered with annual license plates issued by the department.

(g) A person whose initial application has been denied may either receive a refund or select a new alpha-numeric pattern. If an existing personalized alpha-numeric pattern has been cancelled, the person may choose a new personalized alpha-numeric pattern which will be valid for the remainder of the term or will forfeit the remaining term purchased.

§217.32. Replacement of License Plates, Symbols, Tabs, and Other Devices.

(a) When a metal license plate, symbol, tab, or other registration device is lost, stolen, mutilated, or needs to be replaced for cosmetic or readability reasons, a metal license plate replacement may be obtained from any county tax assessor-collector upon:

(1) the payment of the statutory replacement fee prescribed by Transportation Code, §502.060 or §504.007; and

(2) the provision of a signed statement, on a form prescribed by the department, that states:

(A) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, mutilated, or needs to be replaced for cosmetic or readability reasons, and if recovered, will not be used on any other vehicle; and

(B) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(b) If the owner remains in possession of any part of the lost, stolen, or mutilated metal license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

§217.38. Registration Fee Credit: Application.

An application for registration fee credit must be accompanied by:

(1) the current metal license plate(s) and license receipt issued for the destroyed vehicle;

(2) the negotiable certificate of title covering the destroyed vehicle; and

(3) evidence that the vehicle has been destroyed to such an extent that it cannot thereafter be operated on the highways.

§217.41. Disabled Person License Plates and Identification Placards.

(a) Purpose. Transportation Code, Chapters 504 and 681, charge the department with the responsibility for issuing specially designed license plates and identification placards for disabled persons. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of Disabled Person license plates and placards.

(b) Issuance.

(1) Disabled Person license plates.

(A) Eligibility. In accordance with Transportation Code, §504.201, the department will issue specially designed license plates displaying the international symbol of access to permanently disabled persons or their transporters instead of regular motor vehicle license plates.

(B) Specialty license plates. The department will issue Disabled Person insignia on those specialty license plates that can accommodate the identifying insignia and that are issued in accordance with §217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(C) License plate number. Disabled Person license plates will bear a license plate number assigned by the department or will bear a personalized license plate number issued in accordance with §217.45.

(2) Windshield identification placards. The department will issue removable windshield identification placards to temporarily or permanently disabled persons and to the transporters of permanently disabled persons. A person who has been issued a windshield identification placard shall hang the placard from a vehicle's rearview mirror when the vehicle is parked in a disabled person parking space or shall display the placard on the center portion of the dashboard if the vehicle does not have a rearview mirror.

(c) Renewal of Disabled Person license plates. Disabled Person license plates are valid for a period of 12 months from the date of issuance, and are renewable as specified in §217.28 of this title (relating to Vehicle Registration Renewal).

(d) Replacement.

(1) License plates. If a Disabled Person metal license plate is [~~plates are~~] lost, stolen, or mutilated, the owner may obtain a replacement metal license plate [~~plates~~] by applying with a county tax assessor-collector.

(A) Accompanying documentation. To replace permanently Disabled Person metal license plates, the owner must present the current year's registration receipt and personal identification acceptable to the county tax assessor-collector.

(B) Absence of accompanying documentation. If the current year's registration receipt is not available and the county cannot verify that the Disabled Person metal license plates were issued to the owner, the owner must reapply in accordance with this section.

(2) Disabled Person identification placards. If a Disabled Person identification placard becomes lost, stolen, or mutilated, the owner may obtain a new identification placard in accordance with this section.

(e) Transfer of Disabled Person license plates and identification placards.

(1) License plates.

(A) Transfer between persons. Disabled Person license plates may not be transferred between persons. An owner who sells or trades a vehicle to which Disabled Person license plates have been issued shall remove the Disabled Person license plates from the vehicle. The owner shall return the license plates to the department and shall obtain appropriate replacement license plates to place on the vehicle prior to any transfer of ownership.

(B) Transfer between vehicles. Disabled Person license plates may be transferred between vehicles if the county or the department can verify the plate ownership and the owner of the vehicle is the disabled person or the vehicle is used to transport the disabled person.

(i) Plate ownership verification may include:

(I) a Registration and Title System (RTS) inquiry;

(II) a copy of the department Application for Disabled Person license plates; or

(III) the owner's current registration receipt.

(ii) An owner who sells or trades a vehicle with Disabled Person license plates must remove the plates from the vehicle.

(2) Identification placards.

(A) Transfer between vehicles. Disabled Person identification placards may be displayed in any vehicle driven by the disabled person or in which the disabled person is a passenger.

(B) Transfer between persons. Disabled Person identification placards may not be transferred between persons.

(f) Seizure and revocation of placard.

(1) If a law enforcement officer seizes and destroys a placard under Transportation Code, §681.012, the officer shall notify the department by email.

(2) The person to whom the seized placard was issued may apply for a new placard by submitting an application to the county tax assessor-collector of the county in which the person with the disability resides or in which the applicant is seeking medical treatment.

§217.55. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles owned by and used exclusively in the service of a governmental agency, owned by a commercial transportation company and used exclusively for public school transportation services, designed and used for fire-fighting or owned by a volunteer fire department and used in the conduct of department business, privately owned and used in volunteer county marine law enforcement activities, used by law enforcement under an alias for covert criminal investigations, owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operations, or owned or leased by a non-profit emergency medical service provider is exempt from payment of a registration fee and is eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency medical service vehicle.

(i) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456.

(ii) A copy of an emergency medical service provider license issued by the Department of State Health Services must accompany the application.

(C) Fire-fighting vehicle. The application for exempt registration of a fire-fighting vehicle or vehicle owned privately by a volunteer fire department and used exclusively in the conduct of department business must contain the vehicle description, including a description of any fire-fighting equipment mounted on the vehicle if the vehicle is a fire-fighting vehicle. The affidavit must be executed by the person who has the proper authority and shall state either:

(i) the vehicle is designed and used exclusively for fire-fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(D) County marine law enforcement vehicle. The application for exempt registration of a privately owned vehicle used by a volunteer exclusively in county marine law enforcement activities, including rescue operations, under the direction of the sheriff's department must include a statement signed by a person having the authority to act for a sheriff's department verifying that fact.

(E) United States Coast Guard Auxiliary vehicle. The application for exempt registration of a vehicle owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operation, including search and rescue, emergency communications, and disaster operations, must include a statement by a person having authority to act for the United States Coast Guard Auxiliary that the vehicle or trailer is used exclusively in fulfillment of an authorized mission of the United States Coast Guard or

Coast Guard Auxiliary, including search and rescue, emergency communications, or disaster operations.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a title application under §217.103 of this title (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If an exempt metal license plate is lost, stolen, or mutilated, a properly executed application for exempt metal license plates must be submitted to the county tax assessor-collector.

(2) An application for replacement exempt metal license plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

§217.58. Digital License Plate Eligibility.

(a) Vehicles eligible for a digital license plate. The following vehicles are eligible for a digital license plate:

(1) any vehicle owned or operated by a governmental entity; or

(2) a vehicle owned or operated by a person other than a governmental entity if the vehicle is:

(A) registered as part of a commercial fleet under Transportation Code, §502.0023; or

(B) a truck, motorcycle, moped, trailer, semitrailer, or sport utility vehicle, unless the vehicle is registered as a passenger vehicle.

(b) Vehicles not eligible for a digital license plate. Notwithstanding §217.58(a), the following vehicles are not eligible for a digital license plate:

(1) a vehicle registered as a passenger vehicle, including a truck, motorcycle, moped, trailer, semitrailer, or sport utility vehicle; or

(2) a vehicle not required to display a metal license plate on the rear of the vehicle, including:

(A) truck-tractors; or

(B) trucks with combination registration under Transportation Code, §502.255.

(c) Requirements for Eligibility Verification and Issuance of Digital Plates.

(1) An applicant for a digital license plate may not obtain a digital license plate from a digital license plate provider if the vehicle for which the digital license plate is being sought is not registered. The individual must first submit a complete initial application for registration and the accompanying documents and fees at the county tax assessor-collector's office, or at the department for vehicles that must be registered directly through the department under this chapter. After receipt of the necessary documentation and fees, the department will issue one or two metal license plates, in accordance with this chapter, to the applicant for the digital license plate, depending on the type of vehicle. After the department issues the metal license plate or plates to the applicant, the applicant may then proceed with obtaining a digital license plate from a digital license plate provider.

(2) A digital license plate provider must obtain the following information from a digital license plate applicant before it verifies the vehicle's eligibility for a digital license plate:

(A) the last four digits of the vehicle identification number; and

(B) the existing metal license plate number.

(3) A digital license plate provider may not issue a digital license plate for a vehicle that has not been issued Texas registration in the name of the applicant for the digital license plate.

(4) Any metal license plate issued for the rear of the vehicle and any associated plate sticker issued for a rear metal license plate must be carried in or on the vehicle at all times when using a digital license plate.

(5) A digital license plate provider may only issue one digital license plate per eligible vehicle during a single registration period.

§217.59. Digital License Plate Testing.

Before the initial deployment of a digital license plate model and for each subsequent hardware upgrade, which includes all physical aspects of the digital license plate except for the mounting bracket, a digital license plate provider must provide the department with documentation sufficient for the department to be assured that the digital license plate model for which approval is sought was tested in a manner set forth by the department. The documentation must include a description of the testing protocols and methods. Digital license plate testing must be conducted by governmental entities, universities, or independent nonprofit research and development organizations. Testing must include:

(1) reflectivity testing with results that are consistent with the International Organization for Standardization ISO 7591, clauses 6 and 7;

(2) legibility and readability testing with results demonstrating that digital license plates are legible in daytime, as defined in Transportation Code, §541.401 and nighttime, as defined in Transportation Code, §541.401, using low beam headlights, under optimal conditions at a distance of no less than 75 feet; and are readable with commercially-available automated license plate readers and in a variety of weather conditions; and

(3) commercially-available penetration testing, as approved by the department, for the protection of the digital license plate, the electronic display information, and the digital license plate provider's systems. In addition to testing before initial approval and each subsequent hardware upgrade, testing described in this paragraph must be completed for each software or firmware upgrade.

§217.60. Digital License Plate Specifications and Requirements.

(a) In addition to ensuring that the digital license plate meets or exceeds the benefits for law enforcement that are provided by metal license plates, a digital license plate provider must ensure that digital license plates submitted for department approval and provided for customer use comply with the following requirements:

(1) provide an electronic visual display resistant to breakage, and in cases when the electronic visual display is scratched, chipped, cracked, or weather damaged, a digital license plate must continue to legibly display digital license plate information and the physical security feature defined in paragraph 2 of this subsection;

(2) include one or more physical security features to verify the plate was issued by an approved digital license plate provider;

(3) continue to display digital license plate information when the digital license plate does not maintain connectivity to a wireless network; and

(4) when the vehicle is not in park:

(A) display required digital license plate information on the plate in the same font size and location as the information displayed on a corresponding metal license plate; and

(B) display the registration expiration month and year, as determined by the department, in the same font size and location as displayed on a corresponding metal license plate when a vehicle does not have a windshield.

(b) Placement of license plate and vehicle registration insignia.

(1) The digital license plate must be attached to the exterior rear of the vehicle.

(2) A metal license plate must be attached to the exterior front of the vehicle in compliance with this chapter, unless the vehicle is not required to display a plate on the front of the vehicle under this chapter.

(3) The vehicle's registration insignia for validation of registration must be displayed on or kept in a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

§217.61. Digital License Plate Designs and Displays.

(a) Digital license plate designs.

(1) A digital license plate provider is prohibited from designing or creating specialty license plates under Transportation Code Chapter 504, unless the provider has a contract with the department under Transportation Code, §504.851.

(2) A digital license plate provider must enter into a licensing agreement, with standard language as approved by the department, for the display of any third party's intellectual property on a digital license plate.

(b) Digital license plate displays.

(1) Electronic information to be displayed on a digital license plate, including the content and design of both required and optional digital license plate information, must be approved by the department. A digital license plate may not be personalized or customized in any region of interest, including the legend area, except as provided by the department under this chapter.

(2) Optional digital license plate information when in park. When the vehicle is in park, optional digital license plate information may include any of the following optional digital license plate information as approved by the department and the digital license plate owner:

(A) an emergency alert or other public safety alert issued by a governmental entity, including an alert authorized under Subchapter L, M, or P of Government Code Chapter 411;

(B) vehicle manufacturer safety recall notices;

(C) advertising; or

(D) a parking permit pursuant to an agreement between a digital license plate provider and the entity that issues the parking permit.

(3) When the vehicle is in park, required digital license plate information may be reduced in size but must be in a field no smaller than 4.5 inches by 2.5 inches in the upper right-hand corner. The alphanumeric characters and any symbols in the reduced field must be black. The background in the reduced field must be white. There must be two adjoining borders outlining the field. The inside border must be black and the outside border must be white.

(4) If more than one category of optional digital information in subsection (b)(2) of this section could be displayed at one time, the department may determine the order of display on the digital license plate.

(5) A digital license plate may be authorized for electronic toll collection with approval from, and agreement between, a digital license plate provider and the appropriate toll entity.

(c) Registration Expiration Notification.

(1) Digital license plate providers must display the word "EXPIRED" as approved by the department on a digital license plate if registration has expired.

(2) If a digital license plate is displaying a registration expiration notification, the registration notification and optional digital license plate information may not encroach upon the primary or secondary regions of interest.

(3) Unless otherwise prescribed by this chapter, the digital license plate provider must not remove an expired registration notification until after the department confirms registration is current.

(d) Owner authorizations.

(1) The digital license plate provider may not display optional digital license plate information on a digital license plate unless the digital license plate owner authorizes the display.

(2) The digital license plate provider may not disclose GPS data to any person unless the digital license plate owner authorizes its disclosure or the disclosure of the GPS data is required or permitted under other law.

(3) The digital license plate provider must disclose to potential and current digital license plate owners how GPS data authorized for disclosure by the owner or by law will be used and to whom it will be disclosed.

(4) The digital license plate provider may not require the owner to authorize the display or disclosure under paragraphs (1) or (2) of this subsection as a condition of purchase or lease of a digital license plate.

(5) The digital license plate provider must immediately discontinue the display of optional digital license plate information if the digital license plate owner requests for the display of the optional digital license plate information to be discontinued.

(6) The digital license plate provider must provide a single mechanism (or method or means) by which the digital license plate owner may opt in or opt out of the display of optional digital license plate information.

§217.62. Digital license plate removal and malfunction.

(a) A digital license plate provider must have a mechanism to prevent potential theft of and tampering with the digital license plate. At a minimum, a digital license plate provider must ensure the digital license plate ceases the display of digital license plate information:

(1) when a digital license plate malfunctions or termination of services between a digital license plate provider and owner; or

(2) if a digital license plate provider determines that the digital license plate has been compromised, tampered with, or fails to maintain integrity of registration data.

(b) Digital license plate providers must immediately notify the department in the following circumstances:

(1) commencement of services by the digital license plate provider;

(2) termination of services by the digital license plate provider;

(3) determination that the digital license plate has been compromised; or

(4) the transfer of a digital license plate to a different owner.

(c) The digital license plate provider is authorized to disable the display of a digital license plate for failure of the digital license plate owner to pay the fees due to the digital license plate provider.

§217.63. Digital License Plate Fees and Payment.

(a) Fees.

(1) A person issued a digital license plate must pay an administrative fee of $95.00 to the digital license plate provider upon initial application for a digital license plate, and to the county tax-assessor collector or the department, as applicable, on renewal of registration for a vehicle with a digital license plate.

(2) The expiration date of the digital license plate will be aligned with the registration period and the administrative fee due under subsection (a) of this section will be adjusted to yield the appropriate fee.

(3) A digital license plate administrative fee will be refunded only when registration fees are overcharged under Transportation Code, §502. 195.

(b) Payment.

(1) All state, county, local, and other applicable fees are due at the time of registration of a vehicle with a digital license plate.

(2) Digital license plate providers that have received the administrative fee under subsection (a) of this section must submit payment of the administrative fee due in full to the department upon receipt of an application for a digital license plate.

§217.64. Digital License Plate Provider Services and Replacement.

(a) Digital license plate provider services.

(1) A digital license plate provider must provide customer support for digital license plate customers that is available at least during standard business hours Central Time.

(2) An individual who seeks the repair, service, or replacement of a digital license plate must contact a digital license plate provider.

(b) When a digital license plate is lost, stolen, mutilated, or needs to be replaced for cosmetic or readability reasons, including invalidation by the digital license plate provider or plate malfunction:

(1) a digital license plate replacement may be obtained from the digital license plate provider; or

(2) the metal license plate issued for the vehicle may be installed on the rear of the vehicle in lieu of the digital license plate.

(c) Unless a metal license plate was obtained directly from the department, a replacement metal license plate must be obtained from a county tax assessor-collector's office.

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 3, 2020.

TRD-202001331
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 465-5665

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SUBCHAPTER G. INSPECTIONS

43 TAC §217.144

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend Title 43 of the Texas Administrative Code (TAC) §217.144 concerning the training requirements

for individuals performing identification number inspections. The proposed amendments implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Senate Bill 604 changed the name of the "Automobile Burglary and Theft Prevention Authority" to the "Motor Vehicle Crime Prevention Authority."

EXPLANATION. Proposed amendments to §217.144 update the citation to Transportation Code §501.0321. The proposed amendments to §217.144(1) update the name of a required training from "Motor Vehicle Burglary and Theft Investigator Training" to "Motor Vehicle Crime Investigator Training" to reflect the new name of the training. The substance of the training will not change as a result of the name change. Proposed amendments to §217.144(1) also change the reference to the "Automobile Burglary and Theft Prevention Authority" to the "Motor Vehicle Crime Prevention Authority." The proposed amendments are necessary to implement SB 604.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal. The proposed amendments do not change the nature or substance of the training requirements for individuals performing identification number inspections, but merely update the name of one of the required training courses.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the amendments are in effect, there is one public benefit anticipated.

Anticipated Public Benefits. The statutory name change from the "Automobile Burglary and Theft Prevention Authority" to the "Motor Vehicle Crime Prevention Authority" will be reflected in the department's rule. The public benefit anticipated as a result of the proposed amendments is consistency between the department's rules and the Transportation Code.

Anticipated Costs To Comply With The Proposal. Mr. Kuntz anticipates that there will be no costs to comply with these rules. The proposed amendments do not change the nature or substance of the training requirements for individuals performing identification number inspections, but merely update the name of one of the required training courses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002 the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule. The proposed amendments do not change the nature or substance of the training requirements for individuals performing identification number inspections. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that during the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy. Again, the proposed amendments do not change the nature or substance of the training requirements for individuals performing identification number inspections; the proposed amendments merely update the name of one of the required training courses.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on May 18, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Transportation Code §1002.001 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §501.0321 which provides the department authority to adopt rules to determine appropriate training programs for a person who performs vehicle identification number inspections.

CROSS REFERENCE TO STATUTE. Transportation Code, §503.0321 and §1002.001.

§217.144. Identification Number Inspection.

In addition to any other requirement specified by Transportation Code, §501.0321, a person is qualified to perform an inspection under Transportation Code, §501.0321, [~~Transportation Code,~~] if that person has completed one of the following training programs:

(1) Intermediate or Advanced Motor Vehicle Crime [~~Burglary and Theft~~] Investigator Training provided by the Motor Vehicle Crime Prevention Authority [~~Texas Automobile Burglary and Theft Prevention Authority~~];

(2) Auto Theft School (Parts 1 and 2) provided by the Texas Department of Public Safety; or

(3) Auto Theft Course provided by the National Insurance Crime Bureau.

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 6, 2020.

TRD-202001363

Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 465-5665

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SUBCHAPTER I. FEES

43 TAC §217.182

INTRODUCTION. The Texas Department of Motor Vehicles proposes to amend Title 43 Texas Administrative Code (TAC) §217.182 concerning Registration Transactions. These amendments implement Transportation Code, §504.002, as amended by House Bill (HB) 1548, 86th Legislature, Regular Session (2019). Transportation Code, §504.002(b) authorizes the department, if necessary to cover costs of issuing license plates for golf carts under Transportation Code §551.402 or off-highway vehicles under Transportation Code §551A.052, to charge an administrative fee for the issuance of a golf-cart or off-highway vehicle license plate.

EXPLANATION. The proposed amendment to §217.182(5) inserts the word "license" before plate. This amendment is necessary to accurately reflect that an administrative fee is being assessed for a golf cart license plate under Transportation Code, §551.402, and to achieve consistency throughout the entire rule in the use of the term "license plate."

The proposed amendment to §217.182(6) inserts the word "license" before plate. This amendment is necessary to accurately reflect that an administrative fee is being assessed for a golf cart, neighborhood electric vehicle, or off-highway vehicle operated as a package delivery vehicle license plate under Transportation Code §551.452 and to achieve consistency throughout the entire rule in the use of the term "license plate."

Proposed new §217.182(7) adds issuance of an off-highway vehicle license plate under Transportation Code §551A.052 to the list of registration transactions for which an administrative fee may be assessed.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal because the fee assessed for the issuance of an off-highway vehicle license plate will cover the department's administrative costs. Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal because the administrative fee of $4.75 for issuance of an off-highway vehicle license plate is a negligible amount for most businesses.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years amended section is in effect, there are public benefits anticipated because the amendments to §217.182(5) and §217.182(6) will result in a consistent use of the term "vehicle license plate" in the rule and eliminate potential public confusion.

Mr. Kuntz anticipates that there will be costs to comply with these rules. The cost to persons required to comply with the proposal will be $4.75 to be paid as an administrative fee for an off-highway vehicle license plate.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002 the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-business, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department. The proposed amendments will not affect this state's economy. However, the proposed amendments would require an increase in fees paid to the department due to the administrative fee authorized by HB 1548 and charged by the department to cover the cost of issuing an off-highway vehicle license plate. Similarly, the proposed amendments create a new regulation by requiring the payment of an administrative fee for an off-highway vehicle license plate, and increase the number of individuals subject to the rule's applicability by extending this fee requirement to off-highway vehicles.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on May 18, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §217.182 under Transportation Code, §§504.002(b), 551.402(c), and 551A.052(c). Transportation Code §504.002(b) authorizes the department, if necessary to cover the cost of issuing license plates for golf carts or off-highway vehicles, to charge an administrative fee in an amount set by department rule. Transportation Code §551.402(c) directs the department to establish a procedure to issue license plates to golf carts and authorizes the department to charge a fee not to exceed $10 to cover the cost of the license plate. Transportation Code §551A.052(c) directs the department to establish a procedure to issue license plates to off-highway vehicles, and authorizes the department to charge a fee not to exceed $10 to cover the cost of the license plate. Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502, 504, and 551A.

§217.182. Registration Transaction.

As used in this subchapter, a "registration transaction" is a registration or registration renewal under Transportation Code, Chapter 502, or a transaction to issue the following:

(1) a registration, registration renewal, or permit issued under Transportation Code, Chapter 502, Subchapter C (Special Registrations);

(2) a license plate issued under Transportation Code, §502.146;

(3) a temporary additional weight permit under Transportation Code, §502.434;

(4) a license plate or license plate sticker under Transportation Code, §§504.501, 504.502, 504.506, or 504.507;

(5) a golf cart license plate under Transportation Code, §551.402; [~~or~~]

(6) a package delivery vehicle license plate under Transportation Code, §551.452; or [~~.~~]

(7) an off-highway vehicle license plate under Transportation Code, §551A.052.

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 6, 2020.

TRD-202001364
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 17, 2020
For further information, please call: (512) 465-5665

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Department withdraws the proposed amended §65.81 and §65.82, which appeared in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1178).

Filed with the Office of the Secretary of State on April 6, 2020.

TRD-202001361
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: April 6, 2020
For further information, please call: (512) 389-4775

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

The Texas Military Preparedness Commission (Commission) adopts amendments to 1 TAC §§4.1 - 4.4, 4.7, 4.30, and 4.32 - 4.40, concerning the Texas Military Value Revolving Loan Fund and the Defense Economic Adjustment Assistance Grant program, in Subchapters A and B of the Texas Administrative Code. The amendments are adopted under Subchapters D and E, Chapter 436, of the Texas Government Code. The amendments are adopted without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 815) and will not be republished.

REASONED JUSTIFICATION

The Texas Military Value Revolving Loan Fund (TMVRLF) offers loans of financial assistance to defense communities for projects that enhance the military or defense value of a military base or defense facility, that minimize the negative effects of a defense base reduction on the defense community, or that accommodate new or expanded military missions assigned to a military base or defense facility, among other purposes. The Defense Economic Adjustment Assistance Grant (DEAAG) program offers grants to eligible local governmental entities that the Commission determines may be adversely or positively affected by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities. The primary purposes of the amendments to the rules are to update the Commission's policies and procedures used to issue TMVRLF loans and grants under the DEAAG program and to respond to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in Senate Bill 2131 (SB 2131) and House Bill 2119 (HB 2119).

The Commission's rules at 1 TAC §4.1, before the proposed amendments, set out the description of allowable uses for TMVRLF loans. The Commission adopts an amendment that removes the description because the eligible uses for such loans are set out in Chapter 436 of the Texas Government Code. The Commission also adopts amendments that remove defined terms related to the Texas Economic Development Bank (Bank) because the bank is no longer involved in the TMVRLF program. To increase clarity and provide better guidance to potential applicants, the Commission also adopts amendments that establish definitions for "military installation" and "redevelopment value," update defined terms to cross-reference their meanings in statute, remove extraneous language in other definitions, and make other clean-up and updating changes.

The Commission adopts amendments to §4.2, which clarify the information required to be submitted by TMVRLF loan applicants based on current practices, remove references to the Bank, and make other clean-up edits.

The Commission adopts amendments §4.3, which remove the consideration of certain company-related information that is not relevant to defense communities, remove references to the Bank, and make other clarifying revisions.

The adopted amendments to §4.4 remove the minimum loan application requirements because, due to the statutory revisions enacted in SB 2131 and HB 2119, the Commission is now required to consult with the Texas Public Finance Authority to adopt the loan application form. The amendments to §4.4 also remove references to involvement by the Bank in the TMVRLF process, remove the application fee, clarify that a successful loan applicant may bear all closing costs of a loan, and make other clean-up revisions.

The Commission adopts amendments to §4.7 that make additional clean-up revisions and clarify that the Director of the Commission may waive a rule on the Commission's behalf.

The Commission adopts amendments to §4.30 that remove the description of the goals, eligibility requirements, and criteria for DEAAG funds because DEAAG eligibility requirements and criteria are set out in Chapter 436 of the Texas Government Code, and thus are surplusage in the rule, and because the goals of the program are unnecessary additional background. The adopted amendments to §4.30 also update the background of the DEAAG program based on current statute, as well as clean up the rule by making revisions to defined terms, such as to ensure that the terms appear in alphabetical order; revising certain defined terms to cross-reference their meanings in statute; and removing unused terms.

The Commission's rules at §4.32, before the proposed amendments, contained more narrow eligibility criteria for DEAAG funds than the eligibility criteria set out in Chapter 436 of the Texas Government Code. The adopted amendments remove the more narrow eligibility criteria to enable the Commission to rely on the statutory criteria. Additionally, in order to conform with Chapter 436 of the Texas Government Code, as-amended, the Commission adopts amendments to §4.32 that expand the existing requirement to provide documentation of defense worker job loss to also include documentation of defense worker job gain for any positively-affected local governmental entities; to include documentation of actual, anticipated, planned, or announced defense worker job loss or gain, as applicable; and to eliminate the minimum numeric requirements to be included in such documentation.

The Commission adopts amendments to §4.33 to conform documentation requirements to the requirements in §4.32,

as-amended, and to remove the requirement that applicants obtain approval from the Commission before submitting other sources of documentation with their applications.

The Commission adopts amendments to §4.34 that remove the descriptions of possible grant award amounts and matching requirements because the amount of grant awards allowed to be issued by the Commission is set out in Chapter 436 of the Texas Government Code. The adopted amendments at issue also remove the involvement of a local governmental entity's Chief Financial Officer in making certifications regarding the entity's financial status because application certifications are made by the local governmental entity's Chief Executive Officer or equivalent. The adopted amendments at issue also remove the requirement to provide specific information on sales taxes and bond authority because, when required, local governmental entities can show they have undertaken reasonable steps to acquire funding from sources other than sales taxes or bonds. The adopted amendments to §4.34 also make certain clean-up revisions.

In order to adjust cross-references to other rules for which the Commission is adopting amendments and to make other clean-up edits, the Commission adopts amendments to §4.35.

The Commission adopts amendments to §4.36 that remove the discussion of appointing the DEAAG review panel because such mechanism is set out in Chapter 436 of the Texas Government Code. The adopted amendments to such rule also clarify the Commission's role in relation to the review and scoring of applications by the DEAAG review panel, as well as make various clean-up revisions.

The Commission adopts amendments to §4.37 that eliminate the requirement that DEAAG funding be withdrawn in the event a grant awardee's project is rejected for other funding and instead adds that the Commission may withdraw funding if a project or its financing deviates from the description in the DEAAG application. The amendments at issue also make other clean-up edits, including the removal of the discussion of availability of funding over a fiscal biennium in conformity with the repeal of §4.31 the Commission adopts elsewhere in this issue of the *Texas Register.*

The Commission adopts amendments to §4.38 that remove the list of provisions required to be included in a grant contract between the grantee and the Office of the Governor because such grant contracts already must include provisions required by applicable law and generally include relevant, standard terms and conditions of the Office of the Governor, as well as other terms set out in the Uniform Grant Management Standards or other grant standards.

The Commission adopts amendments to §4.39 and §4.40, which increase clarity through a few clean-up revisions and specify that the Director of the Commission may waive a rule on the Commission's behalf under §4.39.

SUMMARY OF COMMENTS

The Commission did not receive any comments regarding the adopted amendments.

SUBCHAPTER A. TEXAS MILITARY VALUE REVOLVING LOAN FUND PROGRAM

1 TAC §§4.1 - 4.4, 4.7

STATUTORY AUTHORITY

The amendments are adopted under Government Code, §436.101(f), which directs and authorizes the Commission to adopt rules necessary to implement its duties.

CROSS REFERENCE TO STATUTE

Subchapter D, Chapter 436, Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2020.

TRD-202001324
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: April 22, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 475-1475

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SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §§4.30, 4.32 - 4.40

STATUTORY AUTHORITY

The amendments are adopted under Government Code, §436.101(f), which provides that the Commission shall adopt rules necessary to implement Chapter 436 of the Texas Government Code.

CROSS REFERENCE TO STATUTE

Subchapter E, Chapter 436, Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2020.

TRD-202001325
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: April 22, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 475-1475

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SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM

1 TAC §4.31

The Texas Military Preparedness Commission (Commission) adopts the repeal of 1 TAC §4.31, concerning the time frame in which Defense Economic Adjustment Assistance Grant funds must be spent. The repeal is adopted without changes to the

proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 822) and will not be republished.

REASONED JUSTIFICATION

The Defense Economic Adjustment Assistance Grant (DEAAG) program offers grants to eligible local governmental entities that the Commission determines may be adversely or positively affected by an anticipated, planned, announced, or implemented action of the United States Department of Defense to close, reduce, increase, or otherwise realign defense worker jobs or facilities.

The Commission's current rule at §4.31 requires DEAAG funds to be spent by the end of the state fiscal biennium in which the grant was awarded. The Commission adopts the repeal of this rule because it may reduce the time period in which DEAAG funds could otherwise be expended under the relevant provisions of the General Appropriations Act and the Texas Government Code that govern when state-appropriated grant funds may be spent.

SUMMARY OF COMMENTS

The Commission did not receive any comments regarding the repeal.

STATUTORY AUTHORITY

The repeal is adopted under Government Code, §436.101(f), which directs and authorizes the Commission to adopt rules necessary to implement its duties.

CROSS REFERENCE TO STATUTE

Subchapter E, Chapter 436, Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2020.

TRD-202001326
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: April 22, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 475-1475

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §90.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 90, Migrant Labor Housing Facilities, §90.9, Dispute Resolution, Appeals, and Hearings, without changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 680). The rule will not be republished.

In accordance with Tex. Gov't Code Chapter 2306, Subchapter LL, a person may not establish, maintain, or operate a Migrant Labor Housing Facility without obtaining a License from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of Licenses. The proposed new rule had been part of the rules in 10 TAC Chapter 90 that were recently repealed and replaced and had been approved by the Board on October 5, 2019, as a proposed rule for publication in the *Texas Register* for public comment; but this one section of Chapter 90 was inadvertently not included in the replacement rules that were published in the *Texas Register* (44 TexReg 6126) on October 25, 2019, received public comment, and were adopted by the Board on January 16, 2020.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under both §2001(0045(c)(6) which exempts rule changes necessary to protect the health, safety, and welfare of the residents of this state, and §2001.0045(c)(9), which exempts rule changes necessary to implement legislation.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rulemaking would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to an existing activity: the licensing and oversight of certain Migrant Labor Housing Facilities.

2. The new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department may be required associated with the acceptance of additional license applications and fees, added inspections, and follow-up of compliance with possible inspections findings and resultant potential for more contested cases, the Department anticipates handling this additional work with existing staff resources. The new rule does not reduce work load such that any existing employee positions could be eliminated.

3. The new rule does not require additional future legislative appropriations.

4. The new rule does not address fees or revenue in any way.

5. The new rule is not creating a new regulation, except that it is replacing a rule which was repealed to provide for review, public comment and possible revisions.

6. The new rule will not limit or repeal an existing regulation. This additional section clarifies the process under which the prospective license may challenge or appeal a decision made by the Department.

7. The new rule does not impact the number of individuals subject to the rule's applicability.

8. The new rule is not expected to have any measurable effect on the state's economy since it merely clarifies the procedural provisions of appealing a staff determination.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new rule and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The new rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from January 30, 2020, to February 27, 2020, to receive input on the new rule. No public comment was received on this rule during this period.

STATUTORY AUTHORITY. The new rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described, herein the adopted new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the new rule and found it to be within the state agency's legal authority to adopt.

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 March 30, 2020.

TRD-202001290
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 19, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 475-1470

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§312.1 - 312.13, 312.41 - 312.50, 312.61 - 312.68, 312.81 - 312.83, 312.121, 312.122, 312.141 - 312.147, 312.149, and 312.150; the repeal of §312.123; and new §§312.123 - 312.130.

The amendments to §§312.1, 312.3, 312.4, 312.7, 312.8, 312.49, 312.50, and 312.144 are adopted *with changes* to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6229), and therefore, will be republished. The amendments to §§312.2, 312.5, 312.6, 312.9 - 312.13, 312.41 - 312.48, 312.61 - 312.68, 312.81 - 312.83, 312.121, 312.122, 312.141 - 312.143, 312.145 - 312.147, 312.149, and 312.150; the repeal of §312.123; and new §§312.123 - 312.130 are adopted *without changes* to the proposed text, and therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking clarifies the intent of existing rule requirements, removes inconsistencies, and improves readability. The adopted rulemaking also includes administrative and technical changes. The administrative changes include renaming "sewage sludge" to "biosolids" as it pertains to beneficial land use and "water treatment sludge" to "water treatment residuals" to be consistent with accepted industry terminology; revising existing and adding new definitions to clarify rule intent; clarifying the notice requirements for permits to be consistent with Texas Health and Safety Code (THSC), §361.121(c), and current transporter rules so they are more enforceable. The technical changes include clarifying the following: the existing prohibition on the land application of any mixture of biosolids with grit trap or grease trap waste; the applicability of buffer zone requirements to existing authorizations; the applicability of an individual permit requirement for a sewage sludge or domestic septage processing facility; the applicability of storage and staging requirements of domestic septage; and the requirements for the land application of water treatment residuals to be consistent with longstanding TCEQ practice.

Section by Section Discussion

The commission adopts various non-substantive changes throughout the chapter to conform to Texas Register requirements and the executive director's current practices and guidelines. These adopted changes include improving the rule structure; defining and using consistent terms; correcting grammatical, syntactic, and typographical errors; updating cross-references; and assigning titles to equations (such as Equation B.1). These changes are non-substantive and not specifically addressed in this Section by Section Discussion.

Additionally, certain terms were revised to prevent ambiguity by clarifying the term used, using consistent terms where the meaning is the same, and using defined terms. These changes are non-substantive and are not addressed in this Section-by-Section Discussion.

Throughout the adopted rulemaking, the commission adopts to differentiate between "sewage sludge" (which does not meet

Class A, AB, or B pathogen and vector attraction reduction requirements) and "biosolids" (which is sewage sludge that has been treated to meet Class A, AB, or B pathogen and vector attraction reduction requirements). Due to these adopted changes, the commission also adopts to replace "annual whole sludge application rate" with "annual whole application rate," and "water treatment sludge" with "water treatment residuals." These adopted changes are consistent with accepted industry terminology. These changes are not addressed in this Section-by-Section Discussion.

§312.1, Purpose

The commission adopts amended §312.1 to include "biosolids" and "water treatment residuals" due to their applicability to the purpose of the rules. The commission removes the following sentence, "The standards applicable to the disposal of water treatment sludge are included" since water treatment residuals was combined with the list of other materials previously listed in the section. At adoption, the commission amends §312.1 to change "record keeping" to "recordkeeping" to be consistent with this change throughout Chapter 312.

§312.2, Applicability

The commission adopts amended §312.2 to include biosolids and water treatment residuals to the applicability of Chapter 312.

§312.3, Exclusions

Throughout §312.3, the commission adopts the replacement of "does not establish requirements for" with "does not authorize" to provide clarification on activities that are not authorized under Chapter 312.

The commission adopts to amend §312.3(e) to add an amended through date for the reference to 40 Code of Federal Regulations (CFR) Part 261 to conform to changes in the federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85732), the May 30, 2018, issue of the *Federal Register* (83 FR 24664), and the February 22, 2019, issue of the *Federal Register* (84 FR 5816).

The commission adopts amended §312.3(f) to include water treatment residuals to be consistent with longstanding TCEQ practice.

The commission adopts amended §312.3(h) to separate the subsection into two subsections and re-letter the subsequent subsections in order to improve readability. This separates the exclusions related to storage and staging from the exclusions related to processing, use, or disposal. The commission adopts "grit trap waste" to include the waste in the list of wastes that are not authorized for processing, use, or disposal under Chapter 312.

The commission adopts amended re-lettered §312.3(m) to replace "grease and grit trap waste" with "grease trap waste" and "grit trap waste" to distinguish them as two separate types of waste. The commission also adopts a statement to clarify that Chapter 312 does not authorize land application of the listed wastes, whether processed or unprocessed, that have been commingled with biosolids, sewage sludge, domestic septage, or water treatment residuals.

At adoption, the commission adds the following language: "unless the grease trap waste is added at a fats, oil, and grease receiving facility as part of an anaerobic digestion process." The clarification regarding fats, oil, and grease (FOG) addition to an anaerobic digestion process is added in response to a stakeholder's comment. FOG addition to an anaerobic digestion process and subsequent treatment within the wastewater treatment system aligns with TCEQ's definition of "Sewage sludge" authorized for land application under Chapter 312.

The commission adopts amended re-lettered §312.3(n) to add "biosolids or domestic septage" to clarify that Chapter 312 does not allow for the registration of processing operations, thus requiring a permit for such activity.

The commission adopts §312.3(o) to state that Chapter 312 does not authorize sewage sludge, biosolids, or domestic septage processing operations unless the processing occurs at a treatment works. After the effective date of this rulemaking, any sewage sludge, biosolids, or domestic septage processing operations that are not located at a treatment works will be required to seek authorization under 30 TAC Chapter 330 (Municipal Solid Waste) or Chapter 332 (Composting), and a processing authorization under Chapter 330 or Chapter 332 may be authorized in accordance with Chapter 312 for the final use and disposal. The commission also adopts a savings clause to allow any processing permit that was issued prior to the effective date of this rulemaking, to continue under the rule requirements as they existed prior to the effective date of this rulemaking. This savings clause applies to renewals, minor amendments, and major amendments to those processing permits.

§312.4, Required Authorizations or Notifications

The commission adopts amended §312.4(a) to include "biosolids, or water treatment residuals in a monofill" to clarify the type of water treatment residuals disposal that requires a permit. This type of authorization has always been required for water treatment residual disposed of in a monofill. The commission's phrase "in a monofill" only applies to water treatment residuals, not sewage sludge or biosolids.

The commission deletes §312.4(a)(1), because all Class B land application registrations have expired or transitioned to a permit. Therefore, this requirement is no longer needed. Subsequent paragraphs are renumbered accordingly.

The commission adopts amended §312.4(b)(1) to clarify that Class A or Class AB biosolids should not meet metal limits, but instead not exceed the metal limits. The commission is also including the word "meets" when describing the pathogen reduction and vector attraction reduction requirements, as biosolids are required to meet these requirements.

The commission adopts amended §312.4(b)(4) to change the due date for Class A and Class AB biosolids annual reports from September 1st to September 30th and to include the reporting period. The adopted due date is consistent with the due date of the Class B biosolids annual report and will allow Class A and Class AB biosolids notification holders time to submit their reports since the reporting period ends on August 31st.

The commission adopts amended §312.4(c)(1) to remove the effective date of September 1, 2003, because all Class B registrations have expired or transitioned to a permit. Therefore, this date is no longer needed.

§312.6, Additional or More Stringent Requirements

The commission adopts amended §312.6 to include biosolids, domestic septage, and water treatment residuals to be consistent with longstanding TCEQ practice. The commission amends the phrase "public health" to "human health" to clarify that the requirements should be protective of all people. The commission

removes the word "pollutant" since there may be adverse effects from non-pollutants (e.g., odor, nuisance conditions, etc.) that could trigger the executive director to impose more stringent requirements than those in Chapter 312.

§312.7, Sampling and Analysis

The commission adopts amended §312.7(a) to include water treatment residuals in the types of materials that are required to be sampled. Water treatment residuals shall be analyzed for pollutants when land applied or placed on a surface disposal site.

At adoption, the commission adds §312.7(c)(9) to include the current United States Environmental Protection Agency (EPA) test method for Polychlorinated Biphenyls (PCBs).

§312.8, General Definitions

The commission adopts amended §312.8(2), "Active sludge unit" to change the term to "Active disposal unit." In addition, the commission adopts the inclusion of domestic septage and water treatment residuals in the definition since both types of wastes can be placed on an active disposal unit.

The commission adopts amended §312.8(6), "Agronomic rate" to remove the word "sludge" from the definition. The adopted change is to clarify that an agronomic rate is not limited to sludge. The commission also adopts amended §312.8(6)(B), to remove the phrase "in the sewage sludge" so that the amount of nitrogen is not just limited to sewage sludge; and remove the phrase "grown on the land" to improve readability.

The commission adopts amended §312.8(9), "Annual whole sludge application rate" to change the term to "Annual whole application rate." The change is adopted to clarify that an annual whole application rate is not limited to sludge. The change also includes amending the definition to include "domestic septage, or water treatment residuals" among the types of wastes that are subject to an annual whole application rate.

The commission adopts the deletion of §312.8(11), "Apply sewage sludge or sewage sludge applied to the land" because the term has been replaced throughout Chapter 312 to land apply or land application. Subsequent definitions are renumbered accordingly.

The commission adopts amended renumbered §312.8(13), "Beneficial use" to replace the word "placement" with the phrase "land application" because placement is used in Chapter 312 in reference to surface disposal which is not beneficial use. The commission also adopts the addition of "domestic septage" and "water treatment residuals," because these materials can be land applied for beneficial use. Additionally, the definition includes food, fiber, feed, or turf as the crops are used for beneficial use and harvested. "Cover crop" is removed since these crops are not harvested, thus making them non-beneficial.

The commission adopts §312.8(14), "Beneficial use site" to define the property boundaries surrounding one or more land application units.

The commission adopts §312.8(15), "Biosolids" to differentiate this material from sewage sludge.

The commission adopts §312.8(25), "Debris." The definition is similar to the previously defined term "Sewage sludge debris."

The commission adopts amended renumbered §312.8(28), "Disposal" to include "biosolids," "domestic septage," and "water treatment residuals" to clarify that the act of disposal will apply to these types of wastes.

The commission adopts §312.8(29) and (30), "Disposal unit" and "Disposal unit boundary." These definitions are is similar to the previously defined term "Sludge unit" and "Sludge unit boundary."

At adoption, the commission amends renumbered §312.8(31), "Domestic septage" to include that chemical toilet waste does not fall under the definition. This change is consistent with §312.3(i), which states that the processing or land application of chemical toilet waste is not authorized under the exclusions section of Chapter 312.

The commission adopts amended renumbered §312.8(37), "Feed crops" to include "horses" and, at adoption, "sheep" in the list of domestic livestock examples that consume feed crops.

The commission adopts §312.8(43), "Grease trap waste" to differentiate grease trap waste from grit trap waste.

The commission adopts amended renumbered §312.8(47), "Harvesting" to clarify that harvesting means the removal of crops from the land application unit. Also, the amendment clarifies that the act of cutting and leaving vegetative material on the land application unit is not considered removal.

The commission adopts §312.8(49), "Incinerator" to clarify that when this commonly understood term is used in Chapter 312, it is limited to incinerators that burn sewage sludge or biosolids only.

The commission adopts §312.8(53), "Irrigation conveyance canal" to provide clarity and improve understanding when the term is used in Chapter 312.

The commission adopts §312.8(54), "Lagoon." The definition is similar to the previously defined term "Sewage sludge lagoon" and at adoption clarifies that it is a surface impoundment that is authorized under a permit issued by the commission.

The commission adopts amended renumbered §312.8(55), "Land application or land apply or land applied" by including "domestic septage" and "water treatment residuals" among the types of material that can be land applied. Sewage sludge is removed from the types of material that can be land applied, because sewage sludge does not meet the criteria for land application.

The commission adopts §312.8(56), "Land application unit" to provide clarity and improve readability when the term is used in Chapter 312 and to differentiate between land application unit and disposal unit.

The commission adopts amended renumbered §312.8(64), "Metal limit" to include "water treatment residuals" to clarify that metal limits apply to water treatment residuals.

The commission adopts amended renumbered §312.8(65), "Monofill" to include "biosolids" and "water treatment residuals" among the types of materials that can be disposed of in a monofill.

The commission adopts the deletion of §312.8(75), "Sewage sludge debris" as this term is revised and defined as "Debris."

The commission adopts the deletion of §312.8(76) - (78), "Sludge lagoon," "Sludge unit," and "Sludge unit boundary" as these terms are revised and defined as "Lagoon," "Disposal unit," and "Disposal unit boundary," respectively.

The commission adopts amended renumbered §312.8(77), "Precipitation" to clarify the climatic conditions that will prevent land application of biosolids or domestic septage.

At adoption, the commission amends §312.8(88), "Stabilization" to define stabilization as biological or chemical treatment processes that minimize subsequent complications due to biodegradation of organic compounds, biologically by reducing organic content and chemically by retarding the degradation of organic materials.

The commission adopts amended renumbered §312.8(89), "Staging" to include "biosolids, domestic septage, and water treatment residuals" among the types of materials that can be staged.

The commission adopts amended renumbered §312.8(90), "Store or storage" to include "biosolids, domestic septage, and water treatment residuals" among the types of materials that can be stored. The commission also adds the phrase "or in an enclosed vessel" to clarify that storage in an enclosed vessel must meet the storage requirements within Chapter 312.

The commission adopts §312.8(92), "Surface impoundment" to provide clarity when the term is used in Chapter 312.

The commission adopts amended renumbered §312.8(94), "Three hundred-sixty-five-day period" to replace the word "cover" with the phrase "feed, food, fiber, or turf" to distinguish between what is grown for harvest for beneficial use.

The commission adopts amended renumbered §312.8(97), "Treat or treatment" by including "biosolids, domestic septage, or water treatment residuals" as these types of material can be treated. Additionally, the commission amends the definition to note that initial alkali addition for pathogen or vector control is considered processing but that subsequent alkali addition for pathogen or vector control is not considered processing.

The commission adopts amended renumbered §312.8(98), "Treatment works" to clarify that a treatment works is located at an authorized wastewater treatment plant. Sewage sludge or biosolids treatment at a beneficial use site or surface disposal site is not a treatment works.

The commission adopts §312.8(99), "Turf crop" to provide clarity when the term is used in Chapter 312 and to allow the production of turf as a beneficial use.

The commission adopts §312.8(104), "Waste pile" to provide clarity when the term is used in the chapter.

The commission adopts amended renumbered §312.8(105), "Water treatment sludge" to change the term to "Water treatment residuals" for consistency with accepted industry terminology.

§312.9, Fee Program

The commission amends the title of §312.9, from "Sludge Fee Program" to "Fee Program" because §312.9 applies to materials other than sewage sludge.

The commission adopts amended §312.9(b) to include the reporting period of September 1st of the previous year to August 31st of the current year to clarify the time period of the annual report information that is due on September 30th.

The commission deletes §312.9(b)(3), since there are no sewage sludge or water treatment plant sludge disposal sites that were authorized by the commission or predecessor agency prior to October 1, 1995. Subsequent paragraphs are renumbered accordingly.

The commission adopts amended renumbered §312.9(b)(4) to clarify that the $0.20 per dry ton fee also applies to water treatment residuals that are applied to a site for beneficial use.

The commission adopts amended §312.9(d) to remove the word "Sludge" because the subsection also pertains to other types of permits.

§312.10, Permit and Registration Applications Processing

The commission adopts amended §312.10(e) and (f) to improve readability and to include permits for the disposal of water treatment residuals in a monofill to be consistent with longstanding TCEQ practice.

§312.11, Permits

The commission adopts amended §312.11(a) to include land application of Class B biosolids and the disposal of water treatment residuals in a monofill as requiring a permit. These changes are consistent with longstanding TCEQ practice.

The commission adopts amended §312.11(c)(1)(B)(i) to replace the phrase "site to be permitted" with "land application unit" to be consistent with §312.13(b)(3)(B) and THSC, §361.121(c). The commission also adopts to remove references to applications submitted on or after September 1, 2003 because all applications submitted before that date have been processed.

The commission adopts amended §312.11(c)(1)(B)(ii) to clarify the "site to be permitted" is the disposal unit or incinerator and for consistency with §312.11(c)(1)(B)(i).

The commission adopts amended §312.11(d)(2)(A) and (3)(A), (f), and (i) to improve readability.

§312.12, Registrations

The commission deletes §312.12(a), because all Class B land application registrations have expired or been replaced with permits. Subsequent subsections are re-lettered accordingly.

The commission adopts amended re-lettered §312.12(a)(1)(I)(i) and (J)(i) to improve readability.

The commission adopts amended re-lettered §312.12(a)(2) to require notice of changes in the source of water treatment residuals. This change is consistent with longstanding TCEQ practice.

§312.13, Actions and Notice

The commission adopts amended §312.13(b)(3)(B) to change "proposed land application site" to "proposed land application unit" for consistent use of a defined term.

The commission adopts amended §312.13(c)(1) to exclude a registration for beneficial land use or disposal of water treatment residuals in a land application unit, surface impoundment, or waste pile from the public notice requirements of §312.13(c).

The commission adopts amended §312.13(d) to change "utilized" to "considered" when determining what action to take on an application if written comments are submitted during the 30-day public comment period. This change is to clarify that comments submitted during the 30-day public comment period are taken into consideration when reviewing a registration application and may result in, but do not necessarily require, additional review of the application based on the issues raised in a particular comment.

§312.41, Applicability

Throughout §312.41, the commission adopts the replacement of the word "meets" with the phrase "do not exceed" with regard to metal limits. Using the terminology of "meets" concentrations implies that the biosolids should contain a certain amount of metals to meet a minimum concentration. Changing the terminology to "do not exceed the metal concentrations" more clearly identifies the concentrations as a maximum limit which should not be exceeded. Replacing "meets" with "do not exceed" for metal concentrations then requires the changes to the remainder of the sentence to include "meets" for stating that the material must meet pathogen and vector attraction reduction requirements in Chapter 312.

The commission adopts amended §312.41(d) to replace "public health" with "human health" to clarify that the requirements should be protective of all people.

§312.42, General Requirements

The commission adopts amended §312.42(b) to replace "meets" with "do not exceed" with regard to metal limits. Using the terminology of "meets" concentrations implies that the biosolids should contain a certain amount of metals to meet a minimum concentration. Changing the terminology to "do not exceed the metal concentrations" more clearly identifies the concentrations as a maximum limit which should not be exceeded.

The commission adopts amended §312.42(b) and (c) to replace "reached" with "exceeded" in reference to cumulative metal loading rates and annual application rates. The change prevents land application to sites that have exceeded the applicable rates, while allowing land application up to the exact rate.

The commission adopts amended §312.42(i) to improve readability and clarity relating to toxicity.

§312.43, Metal Limits

The commission adopts amended Figure: 30 TAC §312.43(b)(1), Figure: 30 TAC §312.43(b)(2), Figure: 30 TAC §312.43(b)(3), and Figure: 30 TAC §312.43(b)(4), to include "Land Application" in the titles and to make non-substantial changes to the formatting of the figures to improve readability.

The commission deletes §312.43(c), which pertained to the calculation of the Annual Application Rate (AAR) for domestic septage. The AAR calculation for domestic septage is moved to adopted §312.49(b).

§312.44, Management Practices

Throughout §312.44, the commission adopts to replace the phrase "sewage sludge" with "biosolids and/or domestic septage" to clarify and be consistent with longstanding TCEQ practice.

The commission adopts amended §312.44(c) to clarify that the buffer zones listed under paragraphs (1)(A) and (B) and (2)(A) - (C), (E), and (F) are required to be established at permit or registration issuance and maintained if a change were to occur in or surrounding the land application unit regardless of the buffer zone applicable at the time of permit or registration issuance. Additionally, the commission adopts amended §312.44(c) to clarify that the buffer zone listed under §312.44(c)(2)(D), which is the requirement of a 750-foot buffer for an established school, institution, business, or occupied residential structure, will be established initially at permit or registration issuance. This buffer must also be re-evaluated only when a permittee or registrant applies for a renewal or major amendment and not during the term of the permit or registration. This clarification means that if, for example, a residential structure is constructed and is occupied after a permit is issued and lies within 750 feet of the boundaries of a land application unit, the buffer will be re-evaluated when the permit undergoes a renewal and not during the permit term.

The commission adopts amended §312.44(h)(3) to replace "rainstorms" with "any type of precipitation occurs" to clarify that biosolids or domestic septage may not be applied during other types of precipitation and not just rainstorms and to clarify that a person who land applies domestic septage is required to submit an Adverse Weather and Alternative Plan.

The commission adopts amended §312.44(j)(3)(C) to clarify that best management practices for minimizing off-site tracking of material and sediment applies to domestic septage.

The commission adopts amended §312.44(j)(4) to clarify that the executive director may require an odor control plan for a person who prepares, or land applies domestic septage.

§312.47, Recordkeeping

The commission amends the title of §312.47 from "Record Keeping" to "Recordkeeping."

The commission adopts amended §312.47(a)(3) and (4) to clarify that the metal concentrations are not exceeded. Adding the language "are not exceeded" more clearly identifies the metal concentrations as a maximum limit which should not be exceeded rather than a concentration that must be in the biosolids.

The commission adopts amended §312.47(a)(3)(B)(ii), (4)(B)(ii), and (5)(B)(ix) to provide clarity and improve readability.

The commission adopts §312.47(a)(7) to include that a person who land applies Class B biosolids develop information regarding the dates of harvesting and the amount harvested (excluding grazing) and retain the information for five years. The amount harvested (i.e., bushels, tons, bales) should reflect the nutrient removal for which the agronomic rate stated in the permit is based.

The commission adopts §312.47(a)(8) to include that, for a person who prepares biosolids, the recordkeeping requirements must be readily available for review by commission staff or be submitted to the executive director upon the request. This additional rule language is consistent with recordkeeping requirements for staging and storage, and record retention for transporters.

The commission adopts amended §312.47(b) to include that records must be readily available for review by commission staff or be submitted to the executive director upon the request for a person who applies domestic septage. This additional rule language is consistent with recordkeeping requirements for staging and storage, and record retention for transporters.

The commission adopts §312.47(b)(9) and (10) to include that a person who land applies domestic septage develop information regarding the dates of harvesting and the amount harvested (excluding grazing) and retain the information for five years. The amount harvested (i.e., bushels, tons, bales) should reflect the nutrient removal for which the agronomic rate stated in the registration is based.

§312.48, Reporting

The commission adopts amended §312.48(1) to include that the annual reporting period is from September 1st of the previous year to August 31st of the current year.

The commission adopts amended §312.48(1)(B)(i) to replace "does not meet" metal concentrations in §312.43(b)(3) with "exceeds" these concentrations. Changing the language to "exceeds" more clearly identifies the metal concentrations as a maximum limit.

The commission adopts amended §312.48(1)(C)(ii) to update the title of the report from "Annual Sludge Summary Report Form" to "Annual Biosolids Land Application Summary Report Form."

The commission adopts amended §312.48(2)(A) to update the title of the report from the "Quarterly Sludge Summary Report Form" to "Quarterly Biosolids Land Application Summary Report Form."

§312.49, Procedure to Determine the Annual Whole Application Rate for Biosolids and Domestic Septage

The commission amends the title of §312.49 from "Appendix A--Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge" to "Procedure to Determine the Annual Whole Application Rate for Biosolids and Domestic Septage" to more accurately reflect the purpose of the section.

The commission adopts amended §312.49 to designate the first paragraph of this section as §312.49(a), and notes that §312.49(a) applies to the annual whole application rate for biosolids.

The commission deletes §312.49(1), (2), (3), and Figure: 30 TAC §312.49(1) (Equation (1)). Additionally, the commission deletes Appendix A which is Figure: 30 TAC §312.49(3) and moves the text of the figure into adopted §312.49(a)(1) - (3). At adoption, the commission corrects two references in §312.49(a)(2) and (3) to read "of this subsection" instead of "of this paragraph.

The commission adopts the renamed and relocated Figure: 30 TAC §312.49(a)(3) (formerly Figure: 30 TAC §312.49(2)). This change is adopted because both Equation (1) and (2) were mathematically the same, but Equation (2) was written in a way to reach the desired result which is the annual whole application rate.

The commission adopts §312.49(b) to require the annual whole application rate for domestic septage to be less than or equal to the rate calculated in Equation B.2. The commission adopts Figure: 30 TAC §312.49(b), also called Equation B.2., which is the mathematical equation for the annual whole application rate for domestic septage.

§*312.50, Storage and Staging of Biosolids and Domestic Septage*

The commission amends the title of §312.50, from "Storage and Staging of Sludge at Beneficial Use Sites" to "Storage and Staging of Biosolids and Domestic Septage" to reflect the types of materials regulated by the section.

The commission adds "domestic septage" throughout §312.50 to clarify that the requirements for storage and staging of domestic septage are the same as for biosolids, which is consistent with longstanding TCEQ practice.

The commission adopts amended §312.50(a)(3) to require biosolids and/or domestic septage be stored away from odor receptors, which would consist of the general public, occupied residences, and public places such as established schools, institutions, or businesses, that may be affected by odors of the stored biosolids and/or domestic septage. This change is consistent with existing staging requirements under this section and is intended to prevent off-site dust migration and nuisance odors.

At adoption, the commission amends §312.50(a)(4) to include "for biosolids only" since a storage area for domestic septage would not need to be lined.

The commission adopts amended §312.50(a)(6) to replace the word "domestic animals" with "domestic livestock" to clarify that the requirement is intended to control access by domestic livestock, such as cattle, horses, goats, or domesticated swine, rather than domestic animals, such as cats or dogs.

At adoption, the commission amends §312.50(a)(7) to include "for biosolids only" since berms or dikes do not need to be constructed for domestic septage storage sites.

The commission adopts amended §312.50(c) to add language to clarify that moving the biosolids and/or domestic septage to another staging area within a land application unit does not restart the timeframe allowed for staging.

The commission adopts §312.50(d) to require recordkeeping for storage and staging of biosolids and/or domestic septage at a land application unit. The recordkeeping will include both the date, volume, and type of material deposited at and removed from a storage facility or staging area. In the event that material is removed from the storage facility or staging area and taken to a different location rather than applied onsite, recordkeeping will include the information about the location where the material was taken. Records will be required to be retained for five years. The addition of these recordkeeping requirements will enable the executive director to verify compliance with the maximum timeframe allowed for storage and staging.

§312.64, Management Practices

The commission adopts amended §312.64(k) and (l) to replace "public health" with "human health" to clarify that the requirements should be protective of all people.

The commission adopts amended §312.64(l) to replace "animals" with "domestic livestock" to clarify the types of animals that must not be allowed to graze on an active disposal unit. This ensures that operators are not liable for wildlife that may graze on the land.

§312.65, Operational Standards--Pathogens and Vector Attraction

The commission adopts amended §312.65(a) to maintain clarity with the adoption of the term "Biosolids."

§312.67, Recordkeeping

The commission amends the title of §312.67 from "Record Keeping" to "Recordkeeping."

The commission adopts amended §312.67(b) to add language to clarify the information that records shall contain when domestic septage is placed on an active disposal unit. The adopted language allows the executive director to verify compliance with the vector attraction requirements in §312.83(b)(12).

§312.68, Reporting

The commission adopts amended §312.68 to add the reporting period.

§312.82, Pathogen Reduction

The commission adopts amended §312.82(a)(2)(B)(i) - (vi) to change "Class A" to "Class AB" to reflect the original intent of the Class AB pathogen requirements from the 2014 rulemaking (Rule Project Number 2014-010-312-OW).

The commission adopts amended Figure: 30 TAC §312.82(a)(3)(A)(i) and Figure: 30 TAC §312.82(a)(3)(A)(iv), to replace the ">" with "=" for consistency with 40 CFR Part 503.

The commission adopts amended §312.82(b)(3)(E) to change "animals" to "domestic livestock" to clarify the types of animals that must not be allowed to graze on land for at least 30 days after application of biosolids. This ensures that operators are not liable for wildlife that may graze on the land.

§312.121, Purpose and Applicability

The commission amends the title of §312.121 to remove the word "Scope" because the scope is no longer included within the section.

The commission deletes §312.121(b), (c), and (e). The adoption of 40 CFR Part 257 by reference is no longer needed because the requirements in 40 CFR Part 257 are directly incorporated within Chapter 312, Subchapter F. This adopted change will encapsulate all of the water treatment requirements within Chapter 312 rather than having to refer to separate regulations. The subsequent subsections are re-lettered accordingly.

§312.122, Registrations and Permits

The commission adopts amended §312.122(a) to replace "landfill" with the term "monofill" to differentiate between disposal in a monofill versus a landfill. This clarification is necessary because the requirements for disposal of water treatment residuals in a landfill are established in Chapter 330. Chapter 312 does, however, establish the requirements for the disposal of water treatment residuals in a monofill.

The commission adopts amended §312.122(b) to replace "40 Code of Federal Regulations Part 257" with the requirements of "this subchapter." As previously noted, the adopted change to Chapter 312, Subchapter F will encapsulate all of the water treatment requirements within the rule rather than having to refer to separate regulations.

§312.123, Annual Report

The commission adopts the repeal of §312.123. The requirements to submit an annual report are adopted as new §312.128. Moving this section improves the flow of the rule.

§312.123, General Requirements

The commission adopts new §312.123 to outline the general requirements that pertain to land application of water treatment residuals, such as, the requirement to comply with Chapter 312, Subchapter F and for the person who provides or land applies water treatment residuals to provide or obtain the information necessary to comply with Chapter 312, Subchapter F. Section 312.123 is adopted to be consistent with current commission policy and with the general requirements for biosolids in §312.42.

§312.124, Metal Limits

The commission adopts new §312.124 to establish the maximum allowable metal concentration in water treatment residuals that can be land applied and require the applicant to determine the soil cadmium concentration to demonstrate that the cumulative cadmium loading will not result in toxicity to the soil. Section 312.124 is adopted to be consistent with current commission policy.

§312.125, Management Practices

The commission adopts new §312.125(a) to establish the requirements under which water treatment residuals can be land applied for the production of food crops and feed crops. These requirements are consistent with 40 CFR §257.3-5. The commission adopts new §312.125(b) - (h) to establish the restrictions and management practices that must be met for land application or disposal of water treatment residuals. These requirements are consistent with current commission policy and the management practices for the land application of biosolids in §312.44.

§312.126, Frequency of Monitoring

The commission adopts new §312.126 to establish the monitoring frequency and the conditions under which the monitoring frequency can be increased or decreased for land application of water treatment residuals. These requirements are consistent with current commission policy and with the monitoring frequency established for the land application of biosolids.

§312.127, Recordkeeping

The commission adopts new §312.127 to establish the recordkeeping requirements and record retention periods for any person that prepares, derives material from, or land applies water treatment residuals. These requirements will allow the executive director to determine compliance with the requirements in Chapter 312, Subchapter F.

§312.128, Annual Report

The commission adopts new §312.128 to establish the requirement to submit an annual report to TCEQ, the due date and reporting period for the report, and the minimum information that must be included in the report. Section 312.128 also notes that the information submitted on the annual report will be used to assess an annual fee.

§312.129, Procedure to Determine the Annual Whole Application Rate for Water Treatment Residuals

The commission adopts new §312.129 to establish the equations and procedures to determine the Annual Whole Application Rate so that it does not cause the annual loading rate for cadmium to be exceeded. This procedure is consistent with the requirements in 40 CFR §§257.3 - 257.5.

§312.130, Storage of Water Treatment Residuals

The commission adopts new §312.130 to establish the requirements for the storage of water treatment residuals prior to disposal or land application.

§312.141, Transporters--Applicability and Responsibility

The commission adopts amended §312.141(d) to change "meets" to "does not exceed" the metal limits in Table 3 of §312.43(b)(3). This is to provide clarification that §312.141 is not applicable to persons transporting biosolids that do not exceed the metal limits in Table 3 of §312.43(b)(3).

§312.142, Transporter Registration

The commission adopts amended §312.142(b)(1) to remove the requirement that a complete signed application form needs to be notarized since the notarized signature is not necessary.

The commission adopts amended §312.142(c) to add the word "current" to the copy of a registration authorized by the exec-

utive director shall be maintained at their designated place of business.

The commission adopts amended §312.142(e) to include that a new transporter registration application is required to be submitted within 15 days when there is a change in ownership or existing operation methods. The commission also adopts amended §312.142(e) to remove the statement that an old registration number will be voided, and the old registration cancelled and to also remove the requirement to submit a new registration application if the registrant fails to submit an annual report. This language is removed because it is unnecessary for the purpose of this rule.

The commission adopts amended §312.142(f) to include that transporters notify the executive director by letter, within 15 days after changes to license plate numbers of registered vehicles, addition of a new vehicle to the fleet, or removal of an existing vehicle from the fleet; if a transporter plans to haul waste to a location not included on the existing registration; or if a transporter plans to remove a location already included on the existing registration. These changes will assist the executive director with tracking transporter vehicles and the locations where wastes are hauled to.

§312.143, Transporters--Delivery Requirement and Full Pump-out Requirement

The commission adopts amended §312.143(a) to clarify that the rule pertains to in-state disposal and to remove "(Texas)" since it is redundant.

The commission adopts §312.143(b) to require transporters that deposit waste out-of-state to deposit wastes at a facility that has obtained written authorization to receive waste as required by the state where the recipient facility is located.

The commission adopts §312.143(c) to require grit traps and grease traps to be fully evacuated unless the trap volume is greater than the tank capacity, in which case the transporter must arrange for the remaining wastes in the trap to be fully evacuated within 24 hours.

§312.144, Transporters--Vehicle and Equipment

The commission adopts amended §312.144(e) to clarify that only when a vehicle, tank, or container that is used to transport domestic septage to a beneficial use site, and treatment occurs within the transporter, the transporter will be required to keep records showing how pathogen and vector attraction reduction requirements were met. The purpose of clarifying this requirement is that there may be situations where septage transporters haul untreated domestic septage and deposit the waste at a permitted domestic septage processing facility. The domestic septage processing facility will be required to keep records showing that the septage meets the requirements of pathogen reduction requirements listed in §312.82(c) and vector attraction reduction requirements in §312.83.

§312.145, Transporters--Recordkeeping

The commission adopts amended §312.145(a)(2) and (7) to allow electronic signatures on trip tickets. This will allow companies that use electronic driver and dispatch logs to collect electronic signatures on trip tickets.

The commission adopts amended §312.145(b)(4) to improve readability and remove redundancy.

§312.147, Temporary Storage

The commission adopts §312.147(c) to establish recordkeeping requirements for temporary storage. The recordkeeping will include the date, volume, and type of waste deposited into and removed from a temporary storage facility, and information about the facility where waste removed was deposited. Records will be required to be retained for five years. The addition of these recordkeeping requirements will enable the executive director to verify compliance with the maximum timeframe allowed for temporary storage.

§312.149, Out-of-State Transportation

The commission amends the title of §312.149, from "Interstate Transportation" to "Out-of-State Transportation."

The commission deletes §312.149(b), since not all states regulate sludge transportation. The TCEQ does not have the ability to check the validity of the authorization nor means of enforcing out-of-state regulations.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. Texas Government Code, §2001.0225, applies to a "Major environmental rule" the result of which is to exceed standards set by federal law, express requirements of state law, requirements of a delegation agreements between state and the federal governments to implement a state and federal program, or rules adopted solely under the general powers of the agency instead of under a specific state law.

A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state. The adopted rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rulemaking is to provide clarification for the intent of rule requirements. The rulemaking will clarify the intent of existing rule requirements, remove inconsistencies, and improve readability.

The adopted rulemaking modifies the state rules related to use and disposal of sewage sludge biosolids, domestic septage, and water treatment residuals. This will have an impact on the environment, human health, and/or public health and safety; however, the adopted rulemaking will not adversely affect the economy, a sector of the economy, productivity, competition, or jobs within the state or a sector of the state. Therefore, the commission concludes that the adopted rulemaking does not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted rulemaking did meet the definition of a "Major environmental rule," it is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal

law specifically requires the rule; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of the four requirements in Texas Government Code, §2001.0225(a). First, this rulemaking does not exceed standards set by federal law. Second, the adopted rulemaking does not exceed an express requirement of state law, but rather changes the requirements under state law to ensure regulatory consistency, regulate more comprehensively the use and disposal of sewage sludge, biosolids, domestic septage, and water treatment residuals, and clarify the executive director's authority related to regulating to the use and disposal of sewage sludge, biosolids, domestic septage, and water treatment residuals. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission adopts the rulemaking under Texas Water Code, §§5.013, 5.102, 5.103, 5.120, 26.011, 26.027, and 26.041; and THSC, §361.121; therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. A comment was received from A&M Septic and Malone Excavating & Waste Water Systems, Inc., stating that the Draft Regulatory Impact Analysis was incorrect in that creating multiple additional recordkeeping requirements for septage haulers and land application sites materially affects the economic viability of the industry and is a direct burden on a section of economy, productivity, and competition. This comment is discussed further in the Response to Comments portion of this preamble.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, §2007.043. The following is a summary of that analysis. The specific purpose of the adopted rulemaking is to provide clarification for the intent of rule requirements. The rulemaking will clarify the intent of existing rule requirements, remove inconsistencies, and improve readability. The adopted rulemaking will substantially advance this stated purpose by adopting language intended to regulate more comprehensively the use and disposal of sewage sludge, biosolids, domestic septage, and water treatment residuals.

Promulgation and enforcement of this adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., which therefore, requires that the goals and policies of the CMP be considered during the rulemaking process.

CMP goals applicable to the adopted rulemaking includes protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. Ensuring sound management of all coastal resources that balances the benefits of economic development with multiple human uses of the coastal zone, while enhancing planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone.

CMP policies applicable to the adopted rulemaking includes 31 TAC §501.13(a)(1) and (2) that mandate commission rules requiring applicants to provide necessary information so that the commission makes an informed decision on an adopted action listed in 30 TAC §505.11 (Actions and Rules Subject to the CMP), and identify the monitoring needed to ensure that activities authorized by actions listed 30 TAC §505.11 comply with all applicable requirements.

The adopted rulemaking clarifies the intent of existing rule requirements, removes inconsistencies, and improves readability. By adopting this rulemaking, there will be greater protection in the areas of concern to the CMP.

The commission conducted a consistency determination for the adopted rulemaking in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22, and found the rulemaking is consistent with the applicable CMP goals and policies.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rulemaking is consistent with those CMP goals and policies and because this rulemaking does not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Public Comment

The commission held a public hearing on November 19, 2019. The comment period closed on November 26, 2019. The commission received comments from A&M Septic and Malone Excavating & Waste Water Systems, Inc.; City of Cleburne; Water Environment Association of Texas (WEAT) and Texas Association of Clean Water Agencies (TACWA); and one individual.

Response to Comments

Comment

A&M Septic and Malone Excavating & Waste Water Systems, Inc. commented that there is no true support for substantive changes to a decades-old program from state lawmakers or the regulated community. There was no statewide support to impose greater burdens on the septage industry then and there is no need to take the same industry-strangling action through rulemaking now.

Response

The commission disagrees with the comment that the rulemaking would impose greater burdens on the septage industry. In

relation to the rules governing domestic septage, the purpose of the rule changes in this case is to improve readability. There are additional requirements imposed on domestic septage land application sites and transporters that include recordkeeping for storage and staging, and to clarify that processing of raw domestic septage (alkali addition) that has not already been treated in the transporter prior to land application, would require a processing permit. Other than these requirements, the rulemaking is not intended to add any other requirements that were not already in practice prior to this rulemaking. No change was made as a result of this comment.

Comment

A&M Septic and Malone Excavating & Waste Water Systems, Inc. commented that the Draft Regulatory Impact Analysis Determination is wrong and creating multiple additional recordkeeping requirements for septage haulers and land application sites materially affects the economic viability of this industry and is a direct burden on a section of the economy, productivity, and competition. Ultimately, the higher costs on the haulers and land appliers will be passed onto septic tank owners and result in harm to the environment.

WEAT and TACWA commented that the crop harvest tracking requirements impose some new operational and recordkeeping requirements and to reconsider these requirements or present them as more than simple administrative changes.

Response

The Chapter 312 rule revisions were not in any way intended to create an effect on the economic viability of the domestic septage or biosolids program. The additional administrative recordkeeping requirements that have been added to Chapter 312 are for biosolids land application sites in §312.47(a)(7) and (8), domestic septage land application sites in §312.47(b)(9) and (10), storage and staging under §312.50(c) and (d), and temporary storage for domestic septage transporters in §312.147(c). The requirements under §312.47(a)(7) and (8) and under §312.47(b)(9) and (10) consist of keeping records of the dates of harvesting and the amount harvested (excluding grazing) for the permitted or registered land application sites. Since these permitted and registered land application sites are strictly for beneficial use purposes and not disposal, annual recordkeeping for this is needed to document that the land application site is operated beneficially and reflects the agronomic rate (number of harvests and crops) stated in the application form that was submitted to and approved by the TCEQ. The requirements under §312.50(c) consist of keeping records of each staging area and timeframe of which the biosolids or domestic septage was staged at a registered land application site. This recordkeeping will keep track to verify that the biosolids or domestic septage staging did not exceed the maximum of seven days. In addition, §312.50(d) consists of keeping records of the biosolids or domestic septage stored at a land application site for up to 90 days. This requirement serves the same purpose as the staging requirement and to keep track to verify that the biosolids or domestic septage storage did not exceed the maximum of 90 days for the TCEQ approved storage. The requirements under §312.147(c) require that transporters that temporarily store biosolids or domestic septage at a fixed or permanent site keep records of the date and volume of the septage deposited and removed from temporary storage to verify that the biosolids or domestic septage storage did not exceed the maximum of 30 days. The commission does not agree that requiring records of annual harvesting, staging, and storage activity would result in higher costs on the haulers and land appliers. No change was made as a result of these comments.

Comment

A&M Septic and Malone Excavating & Waste Water Systems, Inc. commented that the addition of lime for pathogen and vector attraction reduction should not trigger the requirement to obtain a permit and the addition of lime is normally performed at a registered application site to domestic septage which has been almost entirely treated previously in the On-site Sewage Facility (OSSF) from which it is generated. A&M Septic and Malone Excavating & Waste Water Systems, Inc. also stated that contrary to the executive director's position septage from OSSFs transported to registered land application sites is not "raw septage" but has often received advanced aerobic treatment while in the OSSF. Thus, the addition of lime at the site to raise the pH is not "treatment" or "processing" within the traditional meaning of those terms. A&M Septic and Malone Excavating & Waste Water Systems, Inc. also commented that lime addition is normally performed at registered sites, not on the trucks transporting septage. However, if land application sites face losing registrations for the decades-old practice of adding lime to septage, the obligation will be passed to others who are not on-site.

Response

"Treatment" is defined in §312.8(97) as the preparation of domestic septage for final use or disposal. In this case, land application of domestic septage requires prior pathogen reduction treatment consisting of raising the septage to a pH of 12 or higher by alkali addition and, without the addition of more alkali, remain at 12 or higher for a period of 30 minutes. The TCEQ has never approved the processing of domestic septage at an individual septage processing site or land application sites. The TCEQ, however does allow for this process to occur in the registered transporter without obtaining a processing permit under §312.44(c). The purpose of this rule is to clarify that if domestic septage is hauled to a registered beneficial use site, and has not had the prior treatment in the registered transporter (alkali addition), but is treated at the land application site, the entity responsible for treating the domestic septage at a registered land application site would require a TCEQ Municipal Solid Waste (MSW) processing authorization. This requirement is not intended for homeowners to obtain this MSW authorization. No change was made as a result of this comment.

Comment

A&M Septic and Malone Excavating & Waste Water Systems, Inc. commented that the plain language in §312.50 shows that storage areas envisioned by the rules pertain to open-air surface impoundments, not enclosed vessels for which external storage areas need not be constructed. In these cases, the vessel is the storage area contained within itself and obtaining executive director approval would therefore be superfluous and unnecessary. A&M Septic and Malone Excavating & Waste Water Systems, Inc. also commented that it is evident from looking at various subparts of §312.50(a), the type of storage could result in runoff, groundwater contamination, odors, and impact to humans and animals, but is not needed for fully enclosed steel vessels. Vessels do not need berming to minimize runoff or clay liners to retard or prevent migration to groundwater and because they are enclosed, they prevent the emanation of odors and contact by animals or humans.

Response

The application form for domestic septage land application sites includes a section for On-Site Storage (Appendix C) when applying for a registration. Appendix C includes requirements for domestic septage storage for greater than seven days (staging) and up to 90 days at a land application site. These items pertain to domestic septage only and not open-air surface impoundments for sewage sludge or biosolids. In addition, if an already registered domestic septage land application operator plans to construct an on-site storage area during the term of a registration, a written request would also need to be submitted to the TCEQ for review and approval. The commission disagrees with the commenter that obtaining prior approval for a 90-day storage site is superfluous and unnecessary. The commission, however, acknowledges that the requirements listed under §312.50(a) that pertain to open-air storage compared to vessel storage need to be distinguished from one another and amends §312.50(a)(4) and (7) to include "for biosolids only" since liners would not need to be installed or, berms and/or dikes would not need to be constructed for the storage of domestic septage in an in-closed vessel.

Comment

City of Cleburne recommended excluding chemical toilet waste in the definition for "Domestic septage" in §312.8(31) so that it is consistent with the exclusion in §312.147(i).

Response

The commission agrees with this comment and includes language in §312.8(31) to state that chemical toilet waste does not fall under the definition of "Domestic septage." This change is consistent with §312.3(i), which states that the processing or land application of chemical toilet waste is not authorized under the exclusions section of Chapter 312.

Comment

City of Cleburne recommended adding "sheep" to the livestock definition of feed crops in §312.8(37).

Response

The commission agrees with this comment and adds "sheep" to the definition of feed crops in §312.8(37).

Comment

City of Cleburne commented that the definition of "Monofill" in §312.8(65) does not clarify if this is considered a landfill under MSW rule (which requires MSW permitting) or if it is covered under a different permit mechanism and that a reference to permit requirements may be helpful.

Response

The purpose of updating the definition of "Monofill" in §312.8(65) is only to include "biosolids" and "water treatment residuals" among the types of materials that can be disposed of in a monofill. The commission disagrees that the definition needs to clarify that it is considered a landfill under MSW rule or that it requires MSW permitting. Sewage sludge, biosolids, and water treatment residuals monofills are considered to be for disposal and require Water Quality permits as stated in §312.4, Required Authorizations or Notifications and are subject to the permit application procedures stated under that section. No change was made as a result of this comment.

Comment

City of Cleburne recommended including "borrow areas" in the definition of reclamation site in §312.8(81).

Response

The commission agrees with this comment and adds "borrow areas" to the definition of "Reclamation site" in §312.8(81).

Comment

City of Cleburne recommended including recordkeeping requirements for biosolids under §312.47(a)(7)(A) and(B) and also for domestic septage under §312.47(b)(9) and (10) that would reflect production harvested by grazing, and that a person who land applies could record dates of grazing and number of animal units grazing the forage.

Response

The commission intentionally excluded recordkeeping for the number of animal units grazing at permitted or registered beneficial land use sites. The purpose of recordkeeping requirements is to document nutrients removed from the soil through harvesting activities at the site. Harvesting is defined as the removal of a food, fiber, feed, or turf crop from the land by the means of cutting, picking, drying, baling, or gathering. Grazing is not included in the definition of harvesting as grazing animals normally redeposit nutrients back into the soil through their excrement. No change was made as a result of this comment.

Comment

City of Cleburne commented that since water treatment residual monofills would qualify for state only non-discharge permits, a clarification of requirements and applications of permits should be included within §312.122 since §312.122(a) discusses permit requirements for water treatment residuals placed in a monofill, and references to 30 TAC Chapters 281 and 305 (Applications Processing and Consolidated Permits, respectively) seem to primarily apply to wastewater discharges and Texas Pollutant Discharge Elimination System permitting.

Response

As stated in the proposal, the requirements for applications, permits, permit conditions, and actions by the commission shall be in accordance with Chapter 305. Applications for permits will be processed in accordance with Chapter 281. Disposal of water treatment residuals in a landfill is regulated by Chapter 330.

Comment

City of Cleburne commented that there are no directives for management of water treatment residual application in monofills or reclamation sites without agricultural production under §312.125(a) and recommended indication of how reclamation sites may be managed when food and feed production does not occur.

Response

This comment is beyond the scope of this rulemaking. No change was made as a result of this comment.

Comment

WEAT and TACWA requested that the chromium limits in all four tables in §312.43(b) be deleted and to revise the selenium concentration limit in Table 3 of §312.43(b)(3) from 36 mg/kg to 100 mg/kg to be consistent with the limits established in 40 CFR §503.13(b).

Response

This comment is beyond the scope of this rulemaking. The purpose of this rulemaking is to clarify the intent of existing rule requirements, remove inconsistencies, and improve readability within Chapter 312 and not to remove current requirements thus making the rule change less stringent than it was before. No change was made as a result of this comment.

Comment

WEAT and TACWA commented that domestic septage should be required to meet the minimum standards of biosolids for land application and should be regulated and permitted similarly and should be treated as rigorously as biosolids, which are beneficial to the agricultural business and economy of the state of Texas.

Response

This comment is beyond the scope of this rulemaking. No change was made as a result of this comment.

Comment

WEAT and TACWA commented that the rule should be clear that a major amendment will keep an existing permitted processing facility as a Water Quality permit.

Response

The commission agrees with this comment and includes in the preamble that a savings clause would also apply to renewals, minor amendments, and major amendments for water quality processing permits that were issued on or prior to the effective date of the amendments to Chapter 312 so that they would be able to continue under the rule requirements as they existed immediately prior to the effective date of the amendments stated in this rule.

Comment

WEAT and TACWA recommend adding reference to PCB requirements in §312.4(b)(1), which references §312.3(f).

Response

The commission agrees with this comment and includes the PCB requirements in §312.4(b)(1), which are referenced in §312.3(f).

Comment

WEAT and TACWA recommend adding a reference to the approved method for quantifying PCBs in §312.7(c).

Response

The commission agrees with this comment and adds a reference to the current edition of SW-846, Test Method 8082A: *Polychlorinated Biphenyls (PCBs) by Gas Chromatography* under §312.7(c).

Comment

WEAT and TACWA commented that the definition of stabilization is not consistent with EPA and that EPA defines as stabilization as: "biological or chemical treatment processes that minimize subsequent complications due to biodegradation of organic compounds. Biological stabilization reduces organic content. Chemical stabilization retards the degradation of organic materials."

Response

The commission agrees to change to the definition of "Stabilization" based on the comment and changes the definition of "Stabilization" to read "Biological or chemical treatment processes that minimize subsequent complications due to biodegradation of organic compounds, biologically by reducing organic content and chemically by retarding the degradation of organic materials."

Comment

WEAT and TACWA are concerned that as written, §312.3(m) could prohibit the addition of grease as part of a FOG anaerobic digestion process and recommended adding "This chapter does not authorize the land application of processed or unprocessed...grease trap waste, unless the grease trap waste is added at a FOG receiving facility as part of an anaerobic digestion process..."

Response

The commission acknowledges these comments and amends the rule language in §312.3(m) as requested. FOG addition to an anaerobic digestion process and subsequent treatment within the wastewater treatment system aligns with TCEQ's definition of sewage sludge removed from a wastewater treatment system and is authorized for land application under Chapter 312. TCEQ will continue to review and provide approvals for FOG addition to the anaerobic process under Plans and Specifications Engineering reviews.

Comment

WEAT and TACWA are concerned that as written, §312.3(o), which states "This chapter does not authorize sewage sludge, biosolids, or domestic septage processing operations unless the processing occurs at a treatment works" may not allow for a wastewater treatment plant to process biosolids at a separate dedicated or centralized biosolids facility and recommended updating to state "unless the processing occurs at or is associated with a treatment works."

Response

The requested edits have the potential to undermine the purpose of this rule provision, which is to clarify the difference in required authorization types (Water Quality and MSW) as they pertain to the location for the processing of sewage sludge, biosolids, and/or domestic septage. The commission determines that including "or is associated with" is not consistent with the change due to its broad term. An off-site processing facility that would be authorized under MSW could also be considered as "associated with" a treatment works since it receives waste to be processed, thus defeating the point of this rule change. Therefore, the commission respectfully disagrees and cannot include "associated with" in §312.3(o). No change was made as a result of this comment.

Comment

WEAT and TACWA are concerned that the definition of "Harvesting" in §312.8(47) could have cost implications for utilities and recommended to include language that this change can potentially impact the way existing land application operations function.

Response

The main purpose of updating the definition of "Harvesting" in §312.8(47) is to clarify that that the act of cutting and leaving vegetative material on a land application unit is not considered harvesting because no crop is removed by the practice. This definition is intended for permitted or registered land application units and is not intended to have cost impacts to utilities. No change was made as a result of this comment.

Comment

WEAT and TACWA disagreed that domestic septage as an equivalent to treated biosolids in meeting the beneficial use definition, that should be applied under disposal instead and recommended removing domestic septage from §312.8(13).

Response

As opposed to an authorization for disposal, under the registration process, the TCEQ allows the registrant to land apply domestic septage in a manner that is beneficial to the crop grown at registered land application site. When either placed on the land surface or incorporated into the soil, domestic septage contains nutrients that are essential to plant growth and acts as a soil amendment. No change was made as a result of this comment.

Comment

WEAT and TACWA are concerned as the definition of lagoon in §312.8(54) currently reads, this may exclude lagoons at centralized biosolids processing facilities and recommended modifying the text "located on site at a wastewater treatment plant" to instead read "located on site or associated with a wastewater treatment plant" to allow for centralized biosolids processing facilities that are not co-located at a WWTP.

Response

The commission acknowledges adding "or associated with" to the definition of lagoon but instead revises the definition in §312.8(54) to read: "Lagoon--A surface impoundment that is authorized under a permit issued by the commission for the storage of sewage sludge or biosolids. Any other type of impoundment must be considered an active disposal unit."

Comment

WEAT and TACWA recommended deleting the sentence "Biosolids and/or domestic septage shall be stored away from odor receptors in order to prevent off-site dust migration from the storage area and to prevent nuisance odors" in §312.50(a)(3) since it is problematic due to lack of definition and open to subjectivity. The definition of who qualifies as an impacted odor receptor is not provided, and enforcement of and compliance with the provision will be difficult.

Response

This additional rule requirement is consistent with what is currently stated in the seven-day staging requirements under §312.50(c). Just as with staging, the requirement to store biosolids and/or domestic septage for up to 90 days at a land application site is considered a best management practice in which storage would occur away from odor receptors. Odor receptors include the general public, occupied residences, and public places such as established schools, institutions, or businesses, that may be affected by the frequency, intensity, duration, and offensiveness of odors originating from stored biosolids and/or domestic septage. No change was made as a result of this comment.

Comment

An individual commented the 750-foot buffer for an established school, institution, business, or occupied residential structure should be enforced at any time or after operation of the land application site instead of "maintained at all times."

Response

The purpose of this rule change is to clarify that the 750-foot buffer zone for an established school, institution, business, or occupied residential structure, as stated in §312.44(c)(2)(D), be established and maintained upon issuance of a beneficial land use site for Class AB or B biosolids and/or domestic septage. This particular buffer zone must also be re-evaluated only when a permittee or registrant applies for a renewal or major amendment when the land application site continues its operation. These types of land application sites are used for beneficial purposes as a soil amendment by supplying nutrients to plants and vegetation grown on the land to benefit crop production and improve soil structure and therefore, not for disposal. Since this is the case, the buffer zones listed under §312.44(c) are not necessary when they are no longer a permitted, registered, or a currently operating Class AB site. No change was made as a result of this comment.

Comment

An individual commented that adding general requirements, metal limits, management practices, monitoring, recordkeeping, and reporting for water treatment sludge to be consistent with federal requirements and longstanding registration and permitting practices is an inadequate change and that TCEQ has no regulations regulating the thousands of toxic chemical carcinogens in sewage sludge biosolids. The individual also commented that renaming Water Treatment Sludge to Water Treatment Residuals to be consistent with accepted industry terminology is unnecessary since sludge is defined as semisolid material such as the type precipitated by sewage treatment and residuals is defined as the quantity left over at the end of a process; a remainder.

Response

In the case of this rulemaking, water treatment residuals are not precipitated by sewage sludge but are instead material generated during the treatment of either surface water or groundwater for potable use. In this case, the settled solids and filtered material that is left over at the end of the process when treating for potable use is the residual. No change was made as a result of this comment.

Comment

An individual commented that notices should be at least a mile with multiple notices on the site and should have language of the danger of pathogen exposure because of the danger of pathogens in Class B sewage sludge emissions that produce endotoxins and other harmful bio-aerosols.

Response

The purpose of this rulemaking is strictly to clarify the notice requirements based on THSC, §361.121(c), which requires a certified mailed notice to each owner of the land located within one-quarter mile of a proposed "land application unit" where Class B materials are to be applied onto or incorporated into the soil surface for beneficial use or for treatment. This change replaces the current "site to be permitted," which does not match what is in the THSC. No change was made as a result of this comment.

Comment

An individual commented that use of the term "biosolids" as it pertains to beneficial land application of treated domestic sewage sludge (Class A, Class AB, and Class B) is an inadequate change and additional language is needed to inform the user of the chemical risks of using biosolids since all the

user ever sees is the word "beneficial" and the TCEQ refers to biosolids as "comparable to land application of standard fertilizer products."

Response

The primary objective of the TCEQ's Beneficial Land Use Program is to ensure that the use of biosolids will neither endanger the public health nor degrade the environment. Class A, AB, and B biosolids beneficial land use site locations must be selected and operated in a manner to prevent public health nuisances and only properly treated materials that have met rigid requirements to reduce vector attraction and to significantly reduce pathogens are approved for land application. In addition, §312.44 outlines detailed management practices which include buffer zone requirements for biosolids that restrict how close a land application area may be located to property boundaries, public right of ways, residences, schools, or businesses to minimize the potential for causing nuisance conditions. The operator of a biosolids land application site is required to adhere to certain conditions for beneficial land application. The material must be applied uniformly over the surface of the land and must not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species. No change was made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§312.1 - 312.13

Statutory Authority

The amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code (THSC), §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B biosolids on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and THSC, §361.121, which gives the commission the authority to regulate the land application and transportation of Class B biosolids.

§312.1. Purpose.

This chapter establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge or biosolids generated during the treatment of domestic sewage in a treatment works, and for the final use or disposal of domestic septage. Standards are included in this chapter for sewage sludge, biosolids, water treatment residuals, and domestic septage land applied for beneficial use or placed on a surface disposal site. Standards are also included in this chapter for sewage sludge or biosolids fired in an incinerator. Also included in this chapter are pathogen and vector attraction reduction requirements for sewage sludge, biosolids, and domestic septage land applied or placed on a surface disposal site. In addition, the standards in this chapter include the frequency of monitoring and recordkeeping requirements when sewage sludge, biosolids, domestic septage, or water treatment residuals are land applied or placed on a surface disposal site. Also included are the frequency of monitoring and recordkeeping requirements when sewage sludge or biosolids are fired in an incinerator. Also included are requirements relating to the transportation of sewage sludge, biosolids, water treatment residuals, domestic septage, chemical toilet waste, grit trap waste, and grease trap waste.

§312.3. Exclusions.

(a) This chapter does not authorize processes used to treat domestic sewage or for processes used to treat sewage sludge or domestic septage prior to final use or disposal, except as provided in §312.82 and §312.83 of this title (relating to Pathogen Reduction and Vector Attraction Reduction).

(b) This chapter does not require the selection of a method of use or disposal for sewage sludge, biosolids, or domestic septage. The determination of the way sewage sludge, biosolids, or domestic septage is used or disposed is a local determination.

(c) This chapter does not authorize sewage sludge or biosolids co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge or biosolids and other wastes are co-fired. Other wastes do not include auxiliary fuel, as defined in 40 Code of Federal Regulations (CFR) §503.41(b), fired in an incinerator.

(d) This chapter does not authorize the use and disposal of sewage sludge generated at an industrial facility, unless the sewage sludge is of a domestic origin and the sewage sludge is generated from the treatment of domestic sewage. If a process at an industrial facility that primarily treats industrial wastewater combines domestic sewage with any type of industrial solid waste, any resulting sewage sludge, process waste, or wastewater generated at the industrial facility will be considered to be industrial solid waste and must be processed, stored, or disposed of in accordance with the applicable requirements of Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). If a facility that primarily treats domestic wastewater combines domestic sewage with any type of industrial solid waste, any resulting sewage sludge, process waste, or wastewater generated at the facility will be considered to be domestic sewage sludge and must be processed, stored, or disposed of in accordance with the applicable requirements of this chapter.

(e) This chapter does not authorize the use or disposal of sewage sludge or other wastes determined to be a hazardous waste, as defined in §335.1 of this title (relating to Definitions) or as determined in accordance with 40 CFR Part 261 as amended through February 22, 2019 (84 FR 5816).

(f) This chapter does not authorize the use or disposal of sewage sludge, biosolids, or water treatment residuals with a concentration of polychlorinated biphenyls equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

(g) This chapter does not authorize the use or disposal of ash generated during the firing of sewage sludge or biosolids in an incinerator.

(h) This chapter does not authorize the storage of sewage sludge, biosolids, domestic septage, grease trap waste, chemical toilet waste, or grit trap waste, except as provided for in §312.50 of this title (relating to Storage and Staging of Biosolids and Domestic Septage) and §312.147 of this title (relating to Temporary Storage).

(i) This chapter does not authorize the processing, use, or disposal of grease trap waste, grit trap waste, chemical toilet waste, grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity), screenings (e.g., relatively large materials such as rags), or other wastes generated during preliminary treatment of domestic sewage in a treatment works.

(j) This chapter does not authorize the use or disposal of industrial septage or a mixture of domestic septage and industrial septage.

(k) This chapter does not apply to wastes resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources, as defined in §335.1 of this title, except for domestic septage or sewage sludge which may be collected at facilities where such activities occur, that is not mixed in any manner with other oil, gas, or geothermal wastes.

(l) Experimental use shall be excluded from the requirements of this chapter, provided the following conditions are met at the time the sewage sludge or biosolids are placed on a land application unit or reclamation site:

(1) the metal concentrations established in §312.43(b)(3) (Table 3) of this title (relating to Metal Limits) shall be met;

(2) one of the vector attraction reduction alternatives in §312.83(b)(1) - (11) of this title shall be met;

(3) the pathogen reduction compliance requirements established in §312.82(a) or (b) of this title shall be met;

(4) the applicant shall receive written approval from the executive director prior to commencement of operations for the experimental project; and

(5) the applicant shall submit to the executive director the aims and goals of the project and any other additional information the executive director believes necessary to establish the experimental nature of the project.

(m) This chapter does not authorize the land application of processed or unprocessed chemical toilet waste, grease trap waste, grit trap waste, milk solids, or similar non-hazardous municipal or industrial solid wastes, or any of the wastes listed combined with biosolids, sewage sludge, domestic septage, or water treatment residuals,unless the grease trap waste is added at a fats, oil, and grease receiving facility as part of an anaerobic digestion process.

(n) This chapter does not allow for the registration of sewage sludge, biosolids, or domestic septage processing operations or facilities. Such facilities or operations are required to obtain a permit.

(o) This chapter does not authorize sewage sludge, biosolids, or domestic septage processing operations unless the processing occurs at a treatment works. Processing operations that are not located at a treatment works must be authorized under Chapter 330 of this title (relating to Municipal Solid Waste) or Chapter 332 of this title (relating to Composting). The final use and disposal of materials processed at an authorized processing facility may be authorized in accordance with this chapter. Processing permits that were issued on or prior to the effective date of the amendments to this chapter are to continue under the rule requirements as they existed immediately prior to the effective date of the amendments.

§312.4. Required Authorizations or Notifications.

(a) Permits. Except where in conflict with other chapters in this title, a permit shall be required before any storage, processing, incineration, disposal of sewage sludge, biosolids, or water treatment residuals in a monofill, except for storage allowed under this section, §312.50 of this title (relating to the Storage and Staging of Biosolids and Domestic Septage), §312.61(c) of this title (relating to Applicability), §312.147 of this title (relating to Temporary Storage), and §312.148 of this title (relating to Secondary Transportation of Waste). Any permit authorizing disposal of sewage sludge, biosolids, or water treatment residuals in a monofill shall be in accordance with any applicable standards of Subchapter C of this chapter (relating to Surface Disposal) or §312.101 of this title (relating to Incineration). No permit will be required under this chapter if issued in accordance with other requirements of the commission, as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(1) The effective date of a permit is the date that the executive director signs the permit.

(2) Site permit information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or whenever requested by the commission.

(3) If a permit is required under this chapter, all activities at the site under this chapter, except transportation, shall be incorporated in the permit.

(4) The commission may not issue a Class B biosolids permit for a land application unit that is located both in a county that borders the Gulf of Mexico and within 500 feet of any water well or surface water.

(b) Notification of certain Class A or Class AB biosolids land application activities.

(1) If biosolids do not exceed the metal concentration limits in Table 3 of §312.43(b)(3) of this title (relating to Metal Limits) has a concentration of polychlorinated biphenyls less than 50 milligrams per kilogram of total solids, meets the Class A or Class AB pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction), and meets one of the requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), it will not be subject to the requirements of §312.10 of this title (relating to Permit and Registration Applications Processing), §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registrations), and §312.13 of this title (relating to Actions and Notice), except as provided in this subsection.

(2) Any generator in Texas or any person who first conveys sewage sludge or biosolids from out of state into the State of Texas and who proposes to store, land apply, or market and distribute biosolids meeting the standards of this subsection shall submit notification to the executive director, at least 30 days prior to engaging in such activities for the first time on a form approved by the executive director. A completed notification form shall be submitted to the Water Quality Division by certified mail, return receipt requested. The notification must contain information detailing:

(A) biosolids classification, all points of generation, and wastewater treatment facility identification;

(B) name, address, telephone number, and the longitude and latitude of the site for all persons who are being proposed to receive the biosolids directly from the generator;

(C) a description in a marketing and distribution plan that describes any of the following activities:

(i) to sell or give away biosolids directly to the public, including a general description of the types of end uses proposed by persons who will be receiving the biosolids;

(ii) methods of distribution, marketing, handling, and transportation of the biosolids;

(iii) a reasonable estimate of the expected quantity of biosolids to be generated or handled by the person making the notification; and

(iv) a description of any proposed storage and the methods that will be employed to prevent surface water runoff of the biosolids or contamination of groundwater; and

(D) prior to land application, a map showing the buffer zone areas required under §312.44(c)(2)(D) and (E) of this title (relating to Management Practices) for all persons who are being proposed to receive the biosolids directly from the generator that meets one of the Class AB pathogen reduction requirements in §312.82(a)(2) of this title.

(3) Thirty days after the notification has occurred, the activities regulated by this subsection may commence unless the executive director determines that the activities do not meet the requirements of this subsection or an applicant's permit. After receiving a notification, the executive director may review a generator's activities or the activities of the person conveying the biosolids into Texas to determine whether any or all the requirements of this chapter are necessary. In making this determination, the executive director will consider specific circumstances related to handling procedures, site conditions, or the application rate of the biosolids. The executive director may review a proposal for storage of biosolids, considering the amount of time and the amount of material described on the notification. Also, in accordance with §312.41 of this title (relating to Applicability), any reasonably anticipated adverse effect that may occur due to a metal pollutant in the biosolids may also be considered.

(4) Annually, on September 30th, each person subject to notification of certain Class A and Class AB biosolids activities required by this subsection shall provide a report to the executive director, which shows in detail all activities described in paragraph (2) of this subsection that occurred during the year (reporting period September 1st of previous year to August 31st of current year). The report must include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report must also include a description of the annual amounts of biosolids provided to each initial receiver from the in-state generator and for persons who convey out-of-state biosolids into Texas, the amounts provided from this person directly to any initial receivers and an updated list of persons receiving the biosolids. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.128 of this title (relating to Annual Report).

(c) Registration of land application units.

(1) Registrations may only be obtained for the land application of Class A or Class AB biosolids that do not meet the requirements of subsection (b) of this section, water treatment residuals, and domestic septage.

(2) The effective date of the registration is the date that the executive director signs the registration. Site registration information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed or requested by the executive director.

(d) Authorization. No person may cause, suffer, allow, or permit any activity of land application of biosolids, water treatment residuals, or domestic septage unless such activity has received the prior written authorization of the commission.

§312.7. Sampling and Analysis.

(a) Representative samples of sewage sludge, biosolids, domestic septage, or water treatment residuals that are land applied or placed on a surface disposal site shall be collected and analyzed.

(b) Representative samples of sewage sludge or biosolids fired in an incinerator shall be collected and analyzed.

(c) The following methods, other methods as approved by the executive director, or the latest revision shall be used to analyze samples of sewage sludge, biosolids, water treatment residuals, or domestic septage.

(1) Enteric viruses, ASTM Method D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludge," Annual Book of ASTM Standards: Section 11, Water and Environmental Technology, 1992.

(2) Fecal coliform, Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(3) Helminth ova, Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. NTIS PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

(4) Inorganic pollutants, Method SW-846 in "Test Methods for Evaluating Solid Waste," United States Environmental Protection Agency, November 1986.

(5) Salmonella sp. bacteria, Part 9260 D.1, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(6) Specific oxygen uptake rate, Part 2710 B. "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(7) Total solids, fixed solids, and volatile solids, Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(8) Percent volatile solids reduction shall be calculated using a procedure in "Environmental Regulations and Technology--Control of Pathogens and Vectors in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, 1992.

(9) Polychlorinated Biphenyls (PCBs), SW-846, Test Method 8082A, United States Environmental Protection Agency, current edition.

§312.8. General Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed from it.

(2) Active disposal unit--A disposal unit that has not closed and/or is still receiving sewage sludge, biosolids, domestic septage, or water treatment residuals.

(3) Aerobic digestion--The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water, and other by-products by microorganisms in the presence of free oxygen.

(4) Agricultural land--Land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

(5) Agricultural management unit--A portion of a land application area contained within an identifiable boundary, such as a river, fence, or road, where the area has a known crop or land use history.

(6) Agronomic rate--The whole application rate (dry weight basis) designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen that passes below the root zone of the crop or vegetation to the groundwater.

(7) Anaerobic digestion--The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide, and other by-products by microorganisms in the absence of free oxygen.

(8) Annual metal loading rate--The maximum amount of a metal (dry weight basis) that can be applied to a land application unit during a 365-day period.

(9) Annual whole application rate--The maximum amount of biosolids, domestic septage, or water treatment residuals that can be applied to a land application unit during a 365-day period.

(10) Applied uniformly--Land application conducted in such a way that the agronomic rate is not exceeded anywhere in the land application unit.

(11) Aquifer--A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

(12) Base flood--A flood that has a 1% chance of occurring in any given year.

(13) Beneficial use--The land application of biosolids or domestic septage in a manner that complies with the requirements of Subchapter B of this chapter (relating to Land Application and Storage of Biosolids and Domestic Septage), or the land application of water treatment residuals in a manner that complies with the requirements of Subchapter F (relating to Land Application, Storage, and Disposal of Water Treatment Residuals) and does not exceed the agronomic rate for a food, fiber, feed, or turf crop, or any metal or toxic constituent limitations that the food, fiber, feed, or turf crop may have. Land application of biosolids, water treatment residuals, or domestic septage at a rate below the optimal agronomic rate will be considered a beneficial use.

(14) Beneficial use site--An area of land that contains one or more land application units.

(15) Biosolids--Sewage sludge that has been treated or processed to meet Class A, Class AB, or Class B pathogen standards under this chapter for beneficial use.

(16) Bulk biosolids--Biosolids that are not sold or given away in a bag or other container for land application.

(17) Certified nutrient management specialist--An organization in Texas or an individual who is currently certified as a nutrient management specialist through a United States Department of Agriculture-Natural Resources Conservation Service recognized certification program.

(18) Class A biosolids--Biosolids meeting the metal limits in §312.43(b)(1) and (3) of this title (relating to Metal Limits) and the pathogen reduction requirements in §312.82(a)(1)(B) of this title (relating to Pathogen Reduction).

(19) Class AB biosolids--Biosolids meeting the metal limits in §312.43(b)(1) and (3) of this title (relating to Metal Limits) and the pathogen reduction requirements in §312.82(a)(1)(A) of this title (relating to Pathogen Reduction).

(20) Class B biosolids--Biosolids meeting the metal limits in §312.43(b)(1) of this title (relating to Metal Limits) and one of the pathogen reduction requirements in §312.82(b) of this title (relating to Pathogen Reduction).

(21) Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) §141.11, as amended, to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(22) Cover--Soil or other material used to cover sewage sludge, biosolids, domestic septage, or water treatment residuals placed on an active disposal unit.

(23) Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(24) Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a land application unit.

(25) Debris--Solid material such as rubber, plastic, glass, or other trash that may pass through a wastewater treatment process or sewage sludge or biosolids process. Also, material that may be collected with domestic septage. This solid material is visibly distinguishable from sewage sludge, biosolids, and domestic septage. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(26) Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge or biosolids.

(27) Displacement--The relative movement of any two sides of a fault measured in any direction.

(28) Disposal--The placement of sewage sludge, biosolids, domestic septage, or water treatment residuals on the land for any purpose other than beneficial use. Disposal does not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(29) Disposal unit--Land that only sewage sludge or biosolids is placed for disposal. A sewage sludge or biosolids unit must be used for sewage sludge and biosolids. This does not include land that sewage sludge and biosolids is either stored or treated.

(30) Disposal unit boundary--The outermost perimeter of a surface disposal site.

(31) Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domes-

tic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap or chemical toilet waste.

(32) Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(33) Dry weight basis--Calculated based on having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

(34) Experimental use--Non-routine beneficial use land application or reclamation projects where sewage sludge or biosolids are added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(35) Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for surface disposal, land application, or incineration.

(36) Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(37) Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, horses, sheep, or poultry.

(38) Fiber crops--Crops such as flax and cotton.

(39) Final cover--The last layer of soil or other material placed on a sludge or biosolids unit at closure.

(40) Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(41) Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(42) Forest--Land densely vegetated with trees and/or underbrush.

(43) 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.

(44) Grit trap--A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(45) Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from grit traps 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. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(46) Groundwater--Water below the land surface in the saturated zone.

(47) Harvesting--Removal of a food, fiber, feed or turf crop from a land application unit by the means of cutting, picking, drying, baling, or gathering. The act of cutting and leaving vegetative material on the land application unit is not considered harvesting.

(48) Holocene time--The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(49) Incinerator--An apparatus for burning sewage sludge or biosolids at high temperatures until it is reduced to ash.

(50) Incorporation--Mixing the applied material evenly through the top three inches of soil.

(51) Industrial wastewater--Wastewater generated in a commercial or industrial process.

(52) Institution--An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(53) Irrigation conveyance canal--A canal that is constructed to convey water from the source of supply to one or more farms.

(54) Lagoon--A surface impoundment that is authorized under a permit issued by the commission for the storage of sewage sludge or biosolids. Any other type of impoundment must be considered an active disposal unit.

(55) Land application or land apply or land applied--The spraying or spreading of biosolids, domestic septage, or water treatment residuals onto the land surface; the injection of biosolids, domestic septage, or water treatment residuals below the land surface; or the incorporation of biosolids, domestic septage, or water treatment residuals into the soil to either condition the soil or fertilize crops or vegetation grown in the soil.

(56) Land application unit--An area where materials are applied onto or incorporated into the soil surface for beneficial use or for treatment and disposal, where the disposal occurs within five feet of the surface of the land. The term does not include manure spreading operations.

(57) Land with a high potential for public exposure--Land that the public uses frequently and/or is not provided with a means of restricting public access.

(58) Land with a low potential for public exposure--Land that the public uses infrequently and/or is provided with a means of restricting public access.

(59) Leachate collection system--A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a disposal unit.

(60) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(61) Liner--Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners must be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch lifts. Synthetic liners must be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(62) Lower explosive limit for methane gas--The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(63) Major sole-source impairment zone--A watershed that contains a reservoir that is used by a municipality as a sole source of drinking water supply for a population of more than 140,000, inside and outside of its municipal boundaries; and into which at least half of the water flowing is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended, at least in part because of concerns regarding pathogens and phosphorus, and for which the commission at some time prepared and submitted a total maximum daily load standard.

(64) Metal limit--A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge, biosolids, or water treatment residuals (e.g., milligrams per kilogram of total solids); the amount of a metal that can be applied to or disposed onto a land application unit (e.g., kilograms per hectare); or the volume of a material that can be applied to a land application unit (e.g., gallons per acre).

(65) Monofill--A landfill or landfill trench in which sewage sludge, biosolids, or water treatment residuals are the only type of solid waste placed.

(66) Municipality--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or biosolids management; or a designated and approved management agency under federal Clean Water Act, §208, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in federal Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

(67) Off-site--Property that cannot be characterized as "on-site."

(68) On-site--The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access must be by crossing the right-of-way or the right-of-way must be under the control of the person.

(69) Operator--The person responsible for the overall operation of a facility, land application unit, or surface disposal site.

(70) Other container--Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

(71) Owner--The person who owns a facility or part of a facility.

(72) Pasture--Land that animals feed directly on for feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(73) Pathogenic organisms--Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(74) Person who prepares sewage sludge or biosolids--Either the person who generates sewage sludge or biosolids during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge or biosolids.

(75) Place or placed sewage sludge or biosolids--Disposal of sewage sludge or biosolids on a surface disposal site.

(76) Pollutant--An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(77) Precipitation--Deposit on the land of rain, mist, hail, sleet, or snow that falls on the ground under the action of gravitational force.

(78) Process or processing--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(79) Public contact site--Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

(80) Range land--Open land with indigenous vegetation.

(81) Reclamation site--Drastically disturbed land that is reclaimed using sewage sludge, biosolids, or water treatment residuals. This includes, but is not limited to, strip mines, borrow areas, and\or construction sites.

(82) Runoff--Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

(83) Seismic impact zone--An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(84) Sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(85) Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in §307.10 of this title (relating to Appendices A - G) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(86) Source-separated organic material--As defined in §332.2 of this title (relating to Definitions).

(87) Specific oxygen uptake rate--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis).

(88) Stabilization--Biological or chemical treatment processes that minimize subsequent complications due to biodegradation of organic compounds, biologically by reducing organic content and chemically by retarding the degradation of organic materials.

(89) Staging--Temporary holding of sewage sludge, biosolids, domestic septage, or water treatment residuals, at a land application unit, for up to a maximum of seven calendar days per each staging location, prior to land application.

(90) Store or storage--The placement of sewage sludge, biosolids, domestic septage, or water treatment residuals on land or in an enclosed vessel for longer than seven days.

(91) Surface disposal site--An area of land that contains one or more active disposal units.

(92) Surface impoundment--A facility or part of a facility that is a natural topographic depression, human-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 liquid wastes or wastes containing free liquids, and that is not an injection well. Examples of surface impoundments include: holding, storage, settling, and aeration pits, ponds, and lagoons.

(93) Temporary storage--Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title (relating to Temporary Storage).

(94) Three hundred-sixty-five-day period--A running total that covers the period between land application to a site and the nutrient uptake of the feed, food, fiber, or turf crop.

(95) Total solids--The amount of solids in a material that remain as residue when the material is dried at 103 degrees Celsius to 105 degrees Celsius.

(96) Transporter--Any person who collects, conveys, or transports sewage sludge, biosolids, water treatment residuals, grit trap waste, grease trap waste, chemical toilet waste, or domestic septage by roadway, ship, rail, or other means.

(97) Treat or treatment--The preparation of sewage sludge, biosolids, domestic septage, or water treatment residuals for final use or disposal. This includes, but is not limited to, thickening, stabilization, initial alkali addition for pathogen or vector control, and dewatering. This term does not include storage of sewage sludge, biosolids, domestic septage, or water treatment residuals, or subsequent alkali addition for pathogen or vector control.

(98) Treatment works--Either a federally owned, publicly owned, or privately-owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature, located at an authorized wastewater treatment plant.

(99) Turf crop--Grass and the surface layer of earth held together by its roots that is grown and harvested as sod, sprigs, or plugs, primarily for the establishment of lawns.

(100) Unstabilized solids--Organic materials in sewage sludge or biosolids that have not been treated in either an aerobic or anaerobic treatment process.

(101) Unstable area--Land subject to natural or human induced forces that may damage the structural components of an active disposal unit or land application unit. This includes, but is not limited to, land that the soils are subject to mass movement.

(102) Vector attraction--The characteristic of sewage sludge, biosolids, and domestic septage that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(103) Volatile solids--The amount of the total solids in a material that is lost when the material is combusted at 550 degrees Celsius in the presence of excess oxygen.

(104) Waste pile--Any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

(105) Water treatment residuals--Material generated during the treatment of either surface water or groundwater for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(106) Wetlands--Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LAND APPLICATION AND STORAGE OF BIOSOLIDS AND DOMESTIC SEPTAGE

30 TAC §§312.41 - 312.50

Statutory Authority

The amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code (THSC), §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B biosolids on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and THSC, §361.121, which gives the commission the authority to regulate the land application and transportation of Class B biosolids.

§312.49. Procedure to Determine the Annual Whole Application Rate for Biosolids and Domestic Septage.

(a) This subsection contains the procedure used to determine the annual whole application rate (AWAR) for a biosolids that does not cause the annual metal loading rates in Table 4 of §312.43(b)(4) of this title (relating to Metal Limits) to be exceeded. Determine the AWAR using the following procedure.

(1) Analyze a sample of the biosolids to determine the concentration for each of the metals listed in Table 4 of §312.43 of this title.

(2) Using the metal concentrations from paragraph (1) of this subsection and the AMLRs from Table 4 of §312.43 of this title, calculate an AWAR for each metal using Equation B.1.

(3) The AWAR for the biosolids is the lowest AWAR calculated in paragraph (2) of this subsection.
Figure: 30 TAC §312.49(a)(3)

(b) Domestic Septage. The annual whole application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall be equal to or less than the annual whole application rate calculated using Equation B.2.
Figure: 30 TAC §312.49(b)

§312.50. Storage and Staging of Biosolids and Domestic Septage.

(a) Except as provided in subsection (b) of this section, storage of biosolids and/or domestic septage at a land application unit must not exceed 90 days. Storage is allowed only when the following requirements are carried out.

(1) Written authorization must be obtained from the executive director prior to construction of the storage area.

(2) The storage area must be operated and maintained to prevent surface water runoff and to prevent a release to groundwater. Discharge of stormwater or wastewater which has come into contact with biosolids and/or domestic septage is prohibited. The storage area shall be designed to collect such runoff. Any runoff collected during the storage of biosolids and/or domestic septage shall be disposed in a manner to prevent a release to groundwater.

(3) The storage area shall be designed, constructed, and operated in a manner which protects human health and the environment. Biosolids and/or domestic septage shall be stored away from odor receptors in order to prevent off-site dust migration from the storage area and to prevent nuisance odors.

(4) For biosolids only, the storage area must be lined to prevent a release to groundwater. Natural or artificial liners are required for leachate control. A natural liner or equivalent barrier of one foot of compacted clay with a permeability coefficient of 1 x 10^{-7} cm/sec or less must be provided. Various flexible synthetic membrane lining materials may be used in lieu of soil liners if prior written approval has been obtained from the executive director. The applicant shall furnish certification by a licensed professional engineer or licensed professional geoscientist that the completed storage area lining meets the appropriate criteria described in this section prior to using the facilities. The certification shall be signed, sealed, and dated by a licensed professional engineer or licensed professional geoscientist.

(5) The request for the storage area shall outline measures to be taken to minimize vectors and to avoid public health nuisances such as odors.

(6) The storage area shall be fenced, or other methods shall be used, if necessary, to control access by humans or domestic livestock.

(7) For biosolids only, berms or dikes shall be constructed to contain the waste without leakage.

(8) Liquid biosolids and/or domestic septage must be stored in an enclosed vessel.

(9) Processing of biosolids and/or domestic septage is prohibited unless a permit is obtained from the commission.

(10) In the event a person who prepares biosolids and/or domestic septage that is land applied or who land applies biosolids and/or domestic septage, is subject to an Odor Control Plan as described in §312.44(j)(4) of this title (relating to Management Practices), that person must comply with the terms of the applicable Odor Control Plan in order to store biosolids and/or domestic septage at a land application unit.

(b) Up to an additional 90 days of storage will be allowed with the prior approval of the appropriate Texas Commission on Environmental Quality (TCEQ) regional office, for reasons associated with application area flooding, saturated soils, or frozen soils.

(c) Staging of biosolids and/or domestic septage on-site, prior to land application, is allowable without executive director approval. Staging of biosolids and/or domestic septage may only occur for a maximum of seven calendar days per each individual staging location within the land application unit. Up to an additional 14 days of staging biosolids and/or domestic septage will be allowed with the prior approval of the appropriate TCEQ regional office, for reasons associated with application area flooding, saturated soils, frozen soils, or equipment failure. Biosolids and/or domestic septage cannot be moved to another staging area to restart the timeframe allowed for staging. Written records of the location of each staging area and timeframe in which biosolids and/or domestic septage were staged shall be retained by the operator and be readily available for review by a TCEQ representative. The operator shall stage the biosolids and/or domestic septage away from odor receptors in order to prevent off-site dust migration from the staging area and to prevent nuisance odors.

(d) Recordkeeping. The person who stores or stages biosolids and/or domestic septage shall develop the following information and shall retain the information for five years:

(1) the date, volume, and type of material deposited at the storage facility or staging area;

(2) the date, volume, and type of material removed from the storage facility or staging area; and

(3) if the material was not land applied on-site, the permit or registration number, location, and operator of the facility where the material that was removed from the storage facility or staging area was deposited.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SURFACE DISPOSAL

30 TAC §§312.61 - 312.68

Statutory Authority

The amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code (THSC), §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B biosolids on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and THSC, §361.121, which gives the commission the authority to regulate the land application and transportation of Class B biosolids.

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SUBCHAPTER D. PATHOGEN AND VECTOR ATTRACTION REDUCTION

30 TAC §§312.81 - 312.83

Statutory Authority

The amendments are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code (THSC), §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B biosolids on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and THSC, §361.121, which gives the commission the authority to regulate the land application and transportation of Class B biosolids.

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SUBCHAPTER F. LAND APPLICATION, STORAGE, AND DISPOSAL OF WATER TREATMENT RESIDUALS

30 TAC §§312.121 - 312.130

Statutory Authority

The amendments and new sections are adopted under the Texas Water Code (TWC). Specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendments and new sections are also adopted under TWC, §26.027, which authorizes the commission to issue

permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code (THSC), §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B biosolids on a land application unit.

The adopted amendments and new sections implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and THSC, §361.121, which gives the commission the authority to regulate the land application and transportation of Class B biosolids.

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SUBCHAPTER F. DISPOSAL OF WATER TREATMENT SLUDGE

30 TAC §312.123

Statutory Authority

The repeal is adopted under the Texas Water Code (TWC): specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.034.

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SUBCHAPTER G. TRANSPORTERS AND TEMPORARY STORAGE PROVISIONS

30 TAC §§312.141 - 312.147, 312.149, 312.150

Statutory Authority

The amendments are adopted under the Texas Water Code (TWC): specifically, TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC, §5.103; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; TWC, §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state; and TWC, §26.034, which gives the commission the authority to set standards to prevent the discharge of waste that is injurious to the public health.

The amendments are also adopted under TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste or pollutants into or adjacent to water in the state and Texas Health and Safety Code (THSC), §361.121, which gives the commission the authority to require a permit before a responsible person may apply Class B biosolids on a land application unit.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 5.120, 26.011, and 26.027; and THSC, §361.121, which gives the commission the authority to regulate the land application and transportation of Class B biosolids.

§312.144. Transporters--Vehicle and Equipment.

(a) Marking and identification. Owners or operators of specially equipped vacuum pump trucks, tanks, or containers used for the collection and/or over-the-road transportation of wastes regulated under this subchapter shall prominently mark such trucks, tanks, or containers to show the following:

(1) company name;

(2) telephone number;

(3) authorization stickers (motor vehicles only); and

(4) the commission assigned registration number on both sides of the vehicles or receptacle.

(A) The registration number shall be a minimum of two inches in height, in block numbers permanently affixed. The registration number must be clearly visible at a distance of 50 feet.

(B) The company name and phone number, authorization stickers, and the registration number shall be removed from the

trucks, tanks, or containers, by the registrant, when it is no longer authorized by the commission or leaves the control of the person(s) holding the registration.

(b) Sanitation standards. All vehicles and equipment used for the collection and transportation of the wastes regulated under this subchapter shall be constructed, operated, and maintained to prevent loss of liquid or solid waste materials and to prevent health nuisance and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude nuisance conditions such as odors and insect breeding.

(c) Mixing of incompatible wastes. Mixing of incompatible wastes within the same container is prohibited. Transporters shall not use the same container or pumping equipment to collect or transport incompatible waste without first emptying and cleaning the container and equipment of all previously handled wastes. For purposes of this subsection, incompatible waste are wastes which have different processing, storage, or disposal requirements. However, transporters may mix wastes with different characteristics provided the facility to which the waste is being transported is authorized to store, process, or dispose of such mixed wastes.

(d) Site gauges. All closed vehicles, tanks, or containers used to transport liquid wastes regulated by this subchapter shall have sight gauges maintained in a manner which can be used to determine whether a vehicle is loaded and its approximate capacity. Gauges are not required to read in gallons or liters but shall show what percentage of the tank capacity is filled. An alternate method to measure actual volumes may be utilized with prior written approval from the Executive Director.

(e) Septage transport. If domestic septage is transported to a land application unit,the transporter registrant shall keep records showing how the domestic septage transported meets the pathogen and vector attraction reduction requirements listed in §312.82(c) of this title (relating to Pathogen Reduction) and §312.83 of this title (relating to Vector Attraction Reduction). Copies of records pertaining to the pathogen and vector attraction reduction requirements shall be maintained on the vehicles for a minimum of one month and at the land application unit and transporter office for a minimum of five years. Transporters taking domestic septage to a processing facility for treatment are not required to keep records for pathogen and vector attraction reduction.

(f) Discharge valves. All closed vehicles, tanks, or containers used to transport liquid wastes regulated by this subchapter shall prominently mark all discharge valves and ports. All discharge ports shall be visible and readily accessible.

(g) Inspection. All transport vehicles shall include, but are not limited to, trucks, portable tanks, trailers, barges, or similar transport vehicles/receptacles and are subject to inspection by commission staff authorized by the executive director. If a transport vehicle fails the inspection, the authorization sticker and the commission assigned registration number are to be removed from the vehicle and that vehicle is not authorized to transport waste until the vehicle is re-inspected and passes.

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 3, 2020.

TRD-202001342

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 23, 2020
Proposal publication date: October 25, 2019
For further information, please call: (512) 239-6812

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts adopts amendments to §3.101, concerning cigarette tax and stamping activities, without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1357). The rule will not be republished. The amendments implement Senate Bill 21 and House Bill 4614, 86th Legislature, 2019, effective September 1, 2019, that provide the basis for updates to the section by increasing the legal age for a person importing cigarettes in small quantities and modernizing relevant definitions and first sale language.

The comptroller adds new subsection (a) to include definitions found under Tax Code, §154.001 (Definitions), for terms used but not previously defined in this section. The comptroller adds new paragraphs (1) through (10) to define the terms "bonded agent," "cigarette," "distributor," "export warehouse," "first sale," "individual package of cigarettes," "manufacturer," "retailer," "stamp," and "wholesaler," using the meanings assigned by Tax Code, §154.001.

The comptroller reletters subsequent subsections accordingly.

The comptroller amends subsection (b)(1) to remove language that stated that cigarettes must be received in the state in order to constitute a first sale and relocates language regarding cigarette stamping requirements. Subsection (b)(2)(A) is amended for readability.

The comptroller adds new subsection (c) to address permitted distributors' tax liabilities.

The comptroller amends subsections (d) and (e) to make grammatical changes.

The comptroller amends subsection (i) to add the Texas Alcoholic Beverage Commission's (TABC) tax rate for a pack of cigarettes that is imported into this state and makes grammatical changes.

The comptroller reorganizes relettered subsection (l) to improve readability and change all references to the legal age from 18 to 21 for a person who imports cigarettes in small quantities. The comptroller amends the title of the subsection to better reflect the content of the subsection. In paragraph (1), the comptroller replaces existing language concerning importation of 200 or fewer cigarettes with the requirement that a person must be 21 years of age to import small quantities of cigarettes or meet one of the exceptions provided by SB 21. The comptroller replaces existing provisions related to TABC tax collection at ports of entry with

language regarding importation of 200 or fewer cigarettes from another state or an Indian reservation under the jurisdiction of the U.S. government. In paragraph (3), the comptroller deletes the age requirement now found in paragraph (1) and adds that the TABC will collect at ports of entry the cigarette tax from each person who imports and personally transports more than 200 cigarettes into the state from another country. The comptroller amends paragraph (4) to include the exceptions to the age requirement found in SB 21 and to omit a now incorrect cross reference.

No comments were received regarding adoption of the amendment.

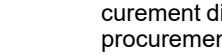
This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), and taxes, fees, or other charges which the comptroller administers under other law.

The amendments implement Tax Code, §§154.001 (Definitions), 154.022 (Tax Imposed on First Sale of Cigarettes),154.0225 (Liability of Permitted distributors),154.024 (Importation of Small Quantities),154.101 (Permits),154.1015 (Sales; Permit Holders and Nonpermit Holders) and Health & Safety Code §161.252 (Possession, purchase, consumption, or receipt of cigarettes, e-cigarettes, or tobacco products by minors prohibited).

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 March 31, 2020.

TRD-202001298
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: April 20, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 475-0387



CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER 5. PROCUREMENT DIRECTOR

34 TAC §§20.560 - 20.562

The Comptroller of Public Accounts adopts new §20.560, concerning definitions, and §20.561, concerning certification of contract file, without changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 871). Sections 20.560 and 20.561 will not be republished. The Comptroller of Public Accounts also adopts new §20.562, concerning certification of vendor assessment, with changes to the proposed text as published in the February 7, 2020, issue of the *Texas Register* (45 TexReg 871).

These rules will be included in Subchapter F, new Division 5, Procurement Director.

These rules are adopted to implement Government Code, §2261.0525(a) and §2262.053(f), added by Senate Bill 65, 86th Legislature, 2019. Delegation of the authority of the procurement director to other persons, as described below, is proposed to efficiently implement new legislative requirements.

New §20.560 sets out the definitions for the division. Paragraph (1) adopts the definition of "contract manager" set out in Government Code, §2262.001. Paragraph (2) defines "procurement director" as the employee designated by a state agency to oversee and be primarily responsible for the procurement of goods and services for the agency.

New §20.561 establishes the requirement for agencies to develop and use a checklist for contracts valued in excess of $50,000.00 to assure compliance with state laws and rules and the retention of applicable file documents. Additionally, a written delegation is required.

New §20.562 establishes the requirements for the assessment and certification of vendors. Additionally, this new rule governs the written delegation required to permit delegation from an agency's procurement director to a qualified individual to review and certify contract assessment.

Comments were received regarding adoption of the new rules. The Texas Department of Transportation provided comments from two individuals which state the proposed rule at §20.562 should recognize other exemptions to the application of §2261.0525. To clarify, the comptroller has revised new §20.562(a) to provide that the requirement of the section applies only to a procurement of goods and services to which Government Code, §2261.0525 applies.

Two agencies, the Department of Family and Protective Services and the Office of Injured Employee Counsel commented that they do not procure goods and services. Rather, each relies on another agency to procure needed goods and services. The comptroller clarifies that because these rules and the statute they implement apply to the procurement of goods and services, they would not apply to an agency that is not procuring goods or services.

The General Land Office commented that is has more than one procurement director, and requested that the definition of "procurement director" recognize that agencies may employ multiple procurement directors and that §20.561 allow "procurement director(s)" to delegate certification of a contract file. The comptroller declines to modify the proposed rule in response to this comment. Government Code §2261.0525 and §2262.053 give the Comptroller of Public Accounts authority to set conditions for delegation of certification authority, but do not authorize the comptroller to set the number of procurement directors at a single agency. If an agency chooses to employ two or more procurement directors, its authority for that decision must be determined without relying on this rule. Because the proposed rule's use of the singular noun "procurement director" follows Government Code, §2261.0525, it is adopted without modification.

Elton Brock, a Certified Texas Procurement Manager, requested that "Certified Texas Procurement Manager" be added to §20.562, alongside Certified Texas Contract Manager and Certified Texas Contract Developer. The Certified Texas Procurement Manager certification is no longer issued by the Comptroller of Public Accounts or recognized in the §20.133 training rule. Within two years, all Certified Texas Procurement Manager certifications will expire. Therefore, the rule is adopted without adding "Certified Texas Procurement Manager." In-

stead, the rule is adopted as revised to acknowledge that some purchasing professionals still hold a predecessor certification in subsection (b)(3)(C).

The new rules are adopted under Government Code, §2262.053(h), which authorizes the comptroller by rule to prescribe contract monitoring responsibilities, as well as Government Code, §2262.0015(a), which authorizes the comptroller by rule to exclude small and routine contracts from the application of Government Code, Chapter 2262.

The new rules implement Government Code, §2261.0525(a) and §2262.053(f).

§20.562. Certification of Vendor Assessment.

(a) Before a state agency may award a contract to a vendor, the agency's procurement director must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. This requirement applies only to a procurement of goods and services to which Government Code, §2261.0525 applies.

(b) A state agency's procurement director may delegate to a person in the agency's procurement office the authority to review and certify the assessment process and documents under Government Code, §2261.0525(a) under the following conditions:

(1) the agency's procurement division has a documented system for ensuring the quality of the vendor assessment process, including the quality of documents used to calculate and record the scoring of vendors;

(2) the delegation is in writing; and

(3) the delegated person:

(A) is not the primary contract manager or contract developer for the contract;

(B) is in a position in the agency's procurement office that is at least equal to the position of contract manager;

(C) is a Certified Texas Contract Manager or Certified Texas Contract Developer under §20.133 of this title (relating to Training and Certification Program), holds a predecessor certification under a previous version of that rule, or is an attorney or certified public accountant licensed to practice in Texas; and

(D) has signed all conflict of interest or nepotism forms required for a contract developer for the particular contract.

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 6, 2020.

TRD-202001365
Don Neal
Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts
Effective date: April 26, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 475-0387

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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.

Adopted Rule Reviews

Office of the Governor

Title 1, Part 1

The Texas Military Preparedness Commission (Commission) has completed the rule review of 1 TAC Chapter 4, Texas Military Preparedness Commission, in its entirety. The review was conducted in accordance with Texas Government Code, §2001.039.

Notice of the review of 1 TAC Chapter 4 was published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6901). The Commission received no comments in response to that notice. The Commission considered whether the reasons for adoption of these rules continue to exist.

After its review, the Commission finds that the reasons for adopting rules 1 TAC §§4.5, 4.6, and 4.8 continue to exist and readopts 1 TAC §§4.5, 4.6, and 4.8 without changes.

As a result of the rule review, the Commission determined certain amendments to 1 TAC §§4.1 - 4.4, 4.7, 4.30, and 4.32 - 4.40 were appropriate and necessary. The changes to 1 TAC §§4.1 - 4.4, 4.7, 4.30, and 4.32 - 4.40 were adopted elsewhere in this issue of the *Texas Register*.

The Commission also determined the repeal of 1 TAC §4.31 is appropriate and necessary. The repeal of 1 TAC §4.31 is adopted elsewhere in this issue of the *Texas Register*.

This concludes the review of 1 TAC, Chapter 4.

TRD-202001327
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Filed: April 2, 2020

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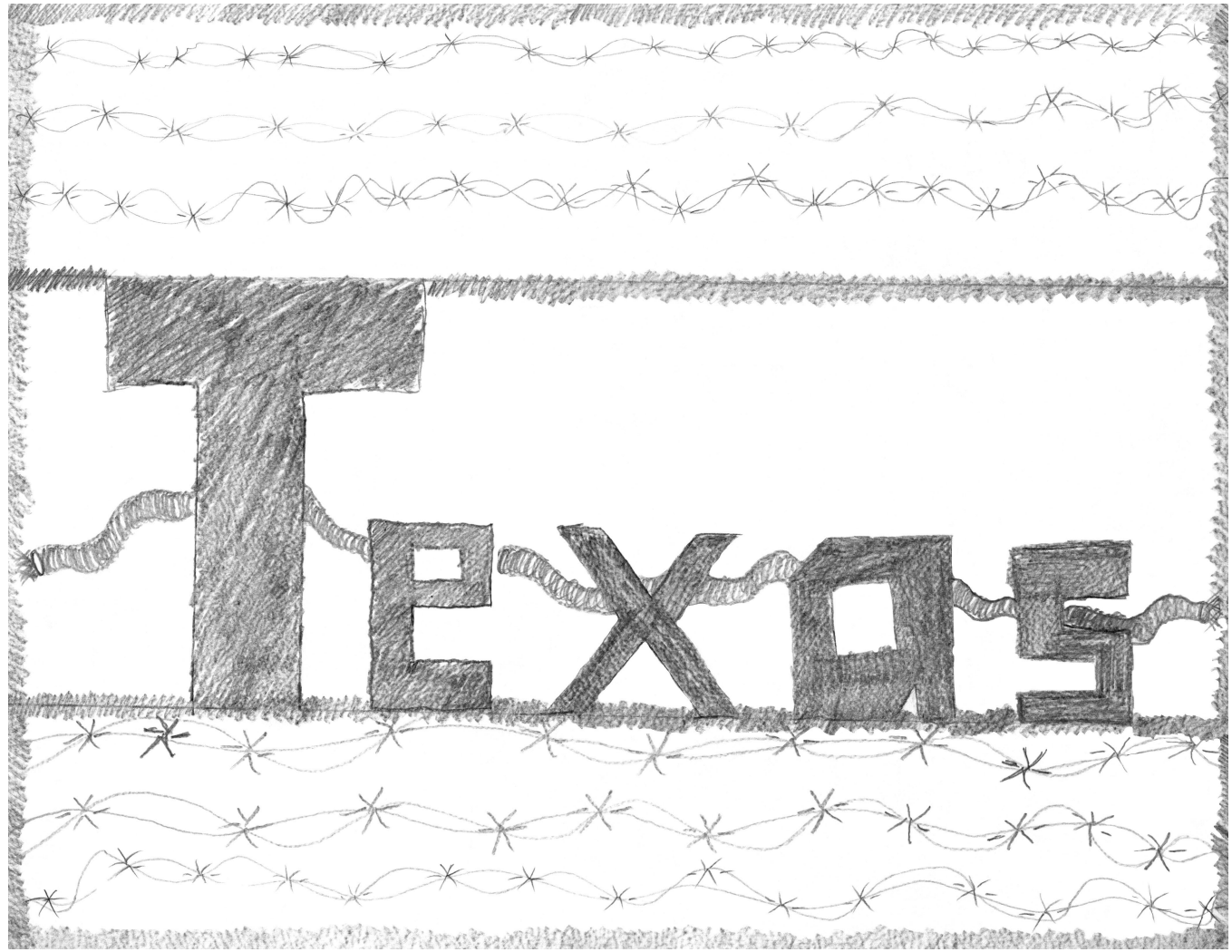

TEXAS

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: 30 TAC §312.49(a)(3)

Equation B.1

$$AWAR = \frac{AMLR}{C \times 0.001}$$

Where:

AMLR = Annual metal loading rate in kilograms per hectare per 365-day period.
C = Metal concentration in milligrams per kilogram of total solids (dry weight basis).
AWAR = Annual whole [sludge] application rate in metric tons per hectare per 365-day period (dry weight basis).
0.001 = A conversion factor.

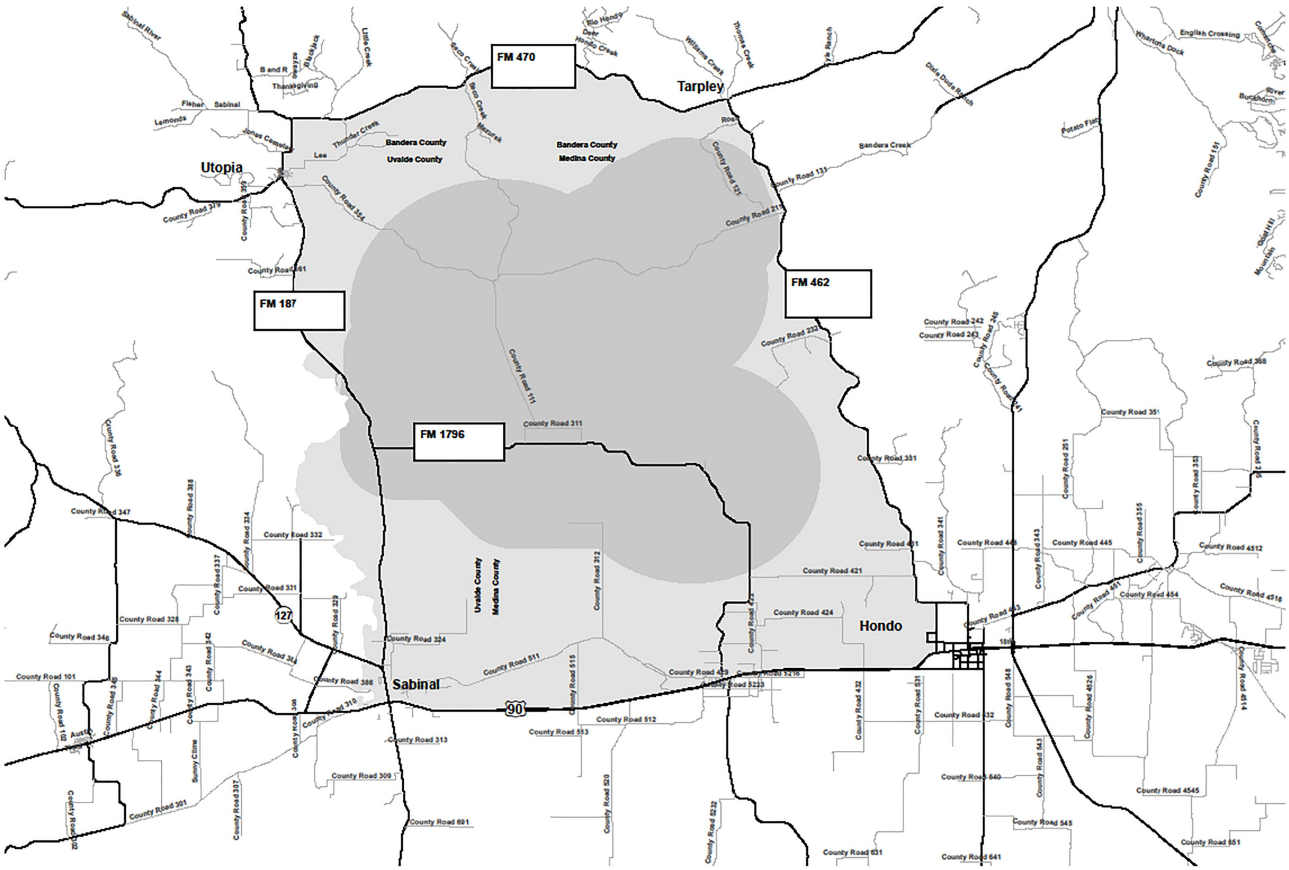
Figure: 30 TAC §312.49(b)

Equation B.2

$$AWAR = \frac{N}{0.0026}$$

Where:
AWAR = Annual whole application rate in gallons per acre per 365-day period
N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

Figure: 31 TAC §65.81(1)(C)



The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals for Audit, Tax and Accounting Services

I. Summary

The Texas State Affordable Housing Corporation ("TSAHC") is issuing this Request for Proposal ("RFP") to identify and contract for audit, tax and accounting consulting services for the three fiscal years ending August 31, 2020, 2021 and 2022. All qualified professional service providers ("Respondents") wishing to apply must submit the materials listed in this RFP in order to be considered.

II. Timeline

TSAHC will accept responses until 3:00 p.m. CDT on May 15, 2020. Please note that the original deadline for submissions was March 31, 2020. However, due to the ongoing health crisis posed by COVID-19, TSAHC has opted to extend the deadline. TSAHC retains the right to extend the submission deadline and selection period depending on responses to the RFP.

If selected, Respondents will execute a professional services engagement letter with TSAHC.

III. Communications with TSAHC

All questions and communications concerning the RFP must be submitted to Melinda Smith, TSAHC's designated point of contact, via email at msmith@tsahc.org.

To protect the integrity of the RFP process, TSAHC's staff and Board of Directors Members (Board Members) shall not have contact with potential Respondents regarding issues or questions pertaining to this RFP. This contact limitation period begins when the RFP is made available and continues through the selection process. If a potential Respondent contacts staff or a Board Member with an issue or question pertaining to the RFP, that staff member or Board Member shall not discuss the RFP and shall forward the inquiry to the designated point of contact. TSAHC reserves the right to disqualify submissions from Respondents that fail to adhere to this contact limitation policy.

IV. About TSAHC

TSAHC is a 501(c)(3) nonprofit organization created at the direction of the Texas Legislature to serve as a self-sustaining, statewide affordable housing provider. TSAHC's mission is to serve the housing needs of low-income families and other underserved populations who cannot access acceptable housing options through conventional financial channels. TSAHC's enabling legislation, as amended, may be found in the Texas Government Code, Chapter 2306, Subchapter Y, Sections 2306.551, *et seq.* A five-member Board of Directors appointed by the Texas Governor oversees the policies and business of TSAHC.

To fulfill its mission, TSAHC provides a variety of affordable housing programs aimed at helping developers build high quality affordable housing, helping home buyers achieve the dream of homeownership, and helping homeowners sustain homeownership and improve their financial situation.

More specifically, TSAHC engages or may engage in the following primary types of business:

-Single Family TBA Loan Program (Down Payment Assistance)

-Single Family Second Lien Loan Program

-Single Family Mortgage Credit Certificate Program

-Single Family Rental Program

-Multifamily Rental Program

-Land Bank and Land Trust Program

-Multifamily Asset Oversight & Bond Compliance Monitoring

-Single Family and Multifamily Developer Direct Lending

-Issuance of Tax-Exempt Single Family & Multifamily Mortgage Revenue Bonds

-Administration of Various Federal and Private Grants

V. Scope of Services

-Performance of the annual financial audit for the three (3) fiscal years ending August 31, 2020; August 31, 2021 and August 31, 2022. The audits should be conducted in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the Consolidated Audit Guide for Audits of HUD Programs; and if necessary, the U.S. Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. All audit field work must be completed, and the final audit report issued no later than November 20th of each year.

-Performance of a review for compliance with the Texas Public Funds Investment Act (Chapter 2256, Texas Government Code) using the guidelines provided by the Texas State Auditor's Office for the fiscal year ending August 31, 2021.

-Preparation of the Corporation's annual Form 990 tax return for the three (3) fiscal years ending August 31, 2020; August 31, 2021; and August 31, 2022.

-Provision of consultation and technical assistance on general accounting and tax issues.

VI. Review and Selection

A panel of TSAHC staff will review all responses based upon the below scoring criteria and will make a recommendation to TSAHC's Audit Committee. TSAHC's Audit Committee will make the final selection and report the decision to TSAHC's Board Members.

Scoring Criteria:

-Demonstrated competence, experience, knowledge, and qualifications.

-Reasonableness of the proposed fees for the services to be performed;

-Previous experience and performance with similar nonprofit organizations; and

-Certification as a Historically Underutilized Business (HUB) or Minority Owned Business (MOB).

TSAHC reserves the right to conduct interviews with Respondents or ask for clarification on a Respondent's submission. TSAHC reserves the right to negotiate with some, all, or none of the Respondents with respect to any term or terms of the responses or contracts. TSAHC reserves the right to negotiate all elements that comprise the Respondent's submission to ensure that the best possible consideration is afforded to all concerned.

VII. Additional Information

This RFP does not commit TSAHC to award a contract to any Respondent or to pay any costs incurred by a Respondent to prepare or submit a response or otherwise participate in this RFP process.

Conflict of Interest

Although the Respondent will be an independent contractor for TSAHC and not an employee of TSAHC, to avoid all possibility of conflicts of interest, all Respondents must certify that none of the owners, officers, or stockholders of the company and none of their families are related within the third degree of consanguinity or the second degree of affinity to any TSAHC employee or any member of the Board of Directors.

Release of Submissions and Proprietary Information

If a Respondent submits proprietary information that should not be publicly disclosed, the proprietary information must be clearly identified at the time of submission. If a Respondent fails to identify proprietary information, all information in the submission will be deemed non-proprietary and will be made available upon request pursuant to the Public Information Act after the review process has been completed.

Federal, State and Local Requirements

Approved Respondents are responsible for both federal and state unemployment insurance coverage and standard workers compensation insurance coverage. Respondents must comply with all federal and state tax laws and withholding requirements. TSAHC will not be liable to a Respondent or its employees for any unemployment or workers' compensation coverage or federal and state tax withholding requirements. Respondents shall indemnify TSAHC and pay to TSAHC any costs, penalties or loss whatsoever occasioned by Respondent's omission or breach of this section.

Minor Deficiencies

TSAHC reserves the right to waive minor deficiencies and informalities if, in the judgment of TSAHC, its best interest will be served.

VIII. Submission Directions

Respondents must include the content listed below and submit in the following manner:

-Respondents must submit responses electronically via email.

-All responses must be signed and dated.

-Proposal information should be numbered and sequentially ordered so that it corresponds to the numbering and order of this RFP.

-Narrative answers to questions are to be limited to one side of a single 8 ½ by 11 typed page.

-Each page must be numbered consecutively and identify the firm's name.

-Responses that do not comply with the conditions specified in this RFP may be rejected. The Corporation also may reject a Response that does not include all requested information.

All proposals must contain the following information and/or address the following issues:

-A cover letter stating the name of the firm, address, telephone number and contact person.

-A description of the firm's understanding of the work to be done.

-Evidence of the firm's ability to provide the specified services in a professional and timely manner, including:

--Documentation that the firm is properly licensed for public practice in the State of Texas.

--Evidence of the firm's experience in performing financial audits of non-profit organizations and audits in compliance with Government Auditing Standards, issued by the Comptroller General of the United States; the Consolidated Audit Guide for Audits of HUD Programs; and the U.S. Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

-Describe the proposed audit team in terms of job position within the firm.

-List names of firm member(s) who will direct the audit including educational background and professional licenses held.

-Describe the level of assistance that will be expected from Corporation personnel.

-State and describe the type of the firm's most recent peer review and provide a copy of the most recent peer review report.

-Provide at least three client references, preferably non-profit organizations.

-Include a projected timeline covering major audit events, including delivery of the final audit report.

-A statement of the firm's affirmative action policy.

-If the firm does not desire proprietary information in its proposal to be disclosed, the firm must identify all proprietary information in the proposal, at the time the proposal is submitted. If a firm fails to identify information as proprietary, the firm agrees by submission of its proposal that information contained therein is nonproprietary and may be made available upon public request.

-Provide a detailed cost proposal, including estimated hours and hourly rates by level of personnel. Also include other itemized direct costs, printing and out-of-pocket costs and any anticipated travel costs. Rates for nonrecurring work should also be itemized.

ALL SUBMISSIONS MUST BE SENT TO:

Melinda Smith

Chief Financial Officer

Texas State Affordable Housing Corporation

msmith@tsahc.org

DEADLINE TO APPLY:

May 15, 2020, at 3:00 p.m. CDT

TRD-202001372
David Long
President
Texas State Affordable Housing Corporation
Filed: April 7, 2020

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Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *The City of Carrizo Springs, Texas, and The State of Texas v. DHW Well Service, Inc.,* Cause No. 17-08-13253-DCVAJA; in the 365th Judicial District Court, Dimmit County, Texas.

Background: Defendant DHW Well Services, Inc. ("Defendant") owns real property located at 255 Loop 517 in Carrizo Springs, Texas. Defendant operates a yard for the business of servicing oil wells, including tank cleanouts, waste hauling, and the disposal of contaminated material. In the Fall of 2016, investigations discovered the unauthorized storage and disposal of oil and contaminated waste into a pit on Defendant's property that drained into the City of Carrizo Springs' sewer system. In 2017, the City of Carrizo Springs filed suit against Defendant for violations of the Texas Water Code and the Texas Health & Safety Code. The petition alleged the unlawful discharge and storage of waste and contaminants, in addition to failures in permitting, recording, reporting, and remediating; all which have been addressed and corrected since the suit was filed. The State of Texas is a necessary and indispensable party to the suit.

Proposed Agreed Judgment: The proposed Agreed Final Judgment includes damages in the amount of $75,000.00, plus civil penalties in the amount of $5,000.00 to be paid by the Defendant to the City of Carrizo Springs. In addition, Defendant is to pay civil penalties in the amount of $5,000.00, as well as $6,500.00 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed in its entirety. A copy of this proposed Agreed Final Judgment is also available from the Office of the District Clerk of Dimmit County, Texas. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Tyler Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202001328
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: April 2, 2020

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Capital Area Rural Transportation System

Community Engagement - Request for Proposals

Capital Area Rural Transportation System (CARTS) is soliciting proposals for Community Engagement/Public Outreach for the Project *"Targeted Mobility Enhancements in Bastrop, a Pilot".*

Beginning at 5:30 p.m., Friday, April 10, 2020, the RFQ will be available in digital format on our website at http://www.ridecarts.com/about/procurement.

The schedule is:

Release of RFQ--April 10, 2020

Responses due at 2:00 p.m.--May 12, 2020

Interviews (if necessary)--May 28, 2020

Award Anticipated--June 5, 2020

Work Begins--June 22, 2020

Final Report & Board Meeting--September 24, 2020

Proposals will be evaluated on qualifications, management approach/experience, scope of work and the completeness and quality of submittal.

TRD-202001377
Dave Marsh
General Manager
Capital Area Rural Transportation System
Filed: April 7, 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 04/13/20 - 04/19/20 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 04/13/20 - 04/19/20 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 04/01/20 - 04/30/20 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 04/01/20 - 04/30/20 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-202001376
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 7, 2020

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Texas Council for Developmental Disabilities

Request for Applications: Older Adults With IDD and Their Caregivers

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for organizations to develop new initiatives to support people with intellectual and developmental disabilities (IDD) who are aging and their caregivers. As this population continues to grow, our system must be better-equipped to serve their unique needs

during this life stage by providing information, resources, and support. Individual projects may focus primarily on meeting the needs of people with IDD who are aging, meeting the needs of aging caregivers of family members with IDD, and/or reducing gaps in the long-term services and supports system for people with IDD who are aging.

TCDD has approved funding for up to two projects for up to $175,000 per organization, per year, for up to five years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the projects is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Applications must be submitted by 11:59 p.m. CT on Thursday, June 25, 2020. Applications will not be accepted after the due date.

TRD-202001392
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: April 8, 2020

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Request for Applications: TCDD Journalism Fellows Program

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for the TCDD Journalism Fellows Program. Through these grants, media entities will hire a journalism fellow who will publish content about people with disabilities and disability issues. Media entities will provide ongoing support and mentorship for the fellow, who will focus on disability-related issues in Texas and publish news and information about services and supports, people with disabilities and their families, and other topics. Content developed by the fellow will inform Texans about disability-related issues and potentially lead to systems change. At the conclusion of the grants, fellows will have the skills, experience, and expertise to pursue a career as a journalist with a disability focus.

TCDD has approved funding for up to six projects for up to $75,000 per organization for 12 months. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for projects is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Applications (RFA) and TCDD is available at

https://tcdd.texas.gov/grants-rfas/funding-available-for-grants/. All questions pertaining to this RFA should be directed in writing to TCDD via email at apply@tcdd.texas.gov or via telephone at (512) 437-5432.

Deadline: Applications must be submitted through https://tcdd.smapply.org/prog/lst/ and will be reviewed by TCDD according to the following schedule: applications received by 11:59 p.m. on June 22, 2020, may be reviewed at the August 2020 Council meeting; applications received by 11:59 p.m. on September 21, 2020, may be reviewed at the November 2020 Council meeting.

TRD-202001390
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: April 8, 2020

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East Texas Regional Water Planning Group (Region I)

Notice of Public Hearing for the East Texas Regional Water Planning Group 2021 Initially Prepared Regional Water Plan

Governor Abbott Allows Virtual & Telephonic Open Meetings to Maintain Government Transparency. As Texas works to mitigate the spread of COVID-19, the Governor granted the Office of the Attorney General's Request for suspension of certain open-meeting statutes. This temporary suspension will allow for telephonic meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

Notice is hereby given that the East Texas Regional Water Planning Group (ETRWPG) is taking comment on and holding a public hearing **via Telephonic Open Public Hearing** for the East Texas Regional Water Planning Group (Region I) 2021 Initially Prepared Plan (IPP). The **telephonic public hearing** for the IPP will include a **public comment period** on **Thursday May 14, 2020, at 5:30 P.M.**

Join by phone: +1 (440) 494-6883 (PIN: 329949771)

The ETRWPG was established under provisions of Texas Senate Bill 1 (7th Texas Legislature) to develop a regional water plan for the ETRWPG which includes the following counties: Anderson, Angelina, Cherokee, Hardin, Henderson, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity, and Tyler.

Due to Public Library/County offices being closed to the public in order to abide by Governor Abbott's temporary suspension of public gatherings:

Copies of the IPP are available for review on the Texas Water Development Board Website at https://www.twdb.texas.gov/waterplanning/rwp/plans/2021/index.asp#region-i; on the East Texas Regional Water Planning Group website at http://www.etexwaterplan.org/2021InntiallyPreparedPlan.htm, and may request a copy from the City of Nacogdoches, Office of the Region I Administrative Contact Stacy Corley, corleys@ci.nacogdoches.tx.us. **Oral** comments will be accepted **during the telephonic public hearing.** The ETRWPG will also accept **written** comments from **April 14, 2020,** through **July 13, 2020,** and may be emailed or mailed to the address below:

QUESTIONS AND COMMENTS MAY BE SUBMITTED TO:

Rex H. Hunt, P.E.

Alan Plummer Associates, Inc.

6300 La Calma, Suite 400

Austin, Texas 78752

Phone: (512) 452-5905 or rhunt@plummer.com

TRD-202001332
Stacy Corley
Region I Administration Contact
East Texas Regional Water Planning Group (Region I)
Filed: April 3, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 18, 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 **May 18, 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: American Midstream Gas Solutions, LP; DOCKET NUMBER: 2019-1617-AIR-E; IDENTIFIER: RN100237502; LOCATION: Longview, Gregg County; TYPE OF FACILITY: natural gas compressing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 Code of Federal Regulations §63.6640(a), Federal Operating Permit Number O3097, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 1.F, and Texas Health and Safety Code, §382.085(b), by failing to maintain the catalyst inlet temperature limit for existing non-emergency four-stroke rich burn stationary reciprocating internal combustion engines greater than 500 horsepower; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Julian Camacho; DOCKET NUMBER: 2020-0310-PWS-E; IDENTIFIER: RN110909603; LOCATION: La Porte, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-0751-AIR-E; IDENTIFIER: RN100215615; LOCATION: Orange, Orange County; TYPE OF FACILITY: high-density polyethylene manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 4140A, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1310, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate (MAER); 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 19394, SC Numbers 3 (effective July 31, 2014) and 4 (effective April 17, 2018), FOP Number O1310, GTC and STC Number 9, and THSC, §382.085(b), by failing to comply with the permitted production limit; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1310, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $25,542; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,217; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Chico; DOCKET NUMBER: 2019-1712-MWD-E; IDENTIFIER: RN102833845; LOCATION: Chico, Wise 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 WQ0010023001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $15,075; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Rio Hondo; DOCKET NUMBER: 2019-1537-PWS-E; IDENTIFIER: RN101209195; LOCATION: Rio Hondo, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(b), (c)(3), and (f)(5)(B) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the acute maximum residual disinfectant level for chlorine dioxide during the month of August 2019; and 30 TAC §290.114(a)(2)(B) and (4), by failing to collect and report the results of chlorite sampling to the executive director for the May 2019 monitoring period; PENALTY: $868; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Cypress Valley Water Supply Corporation; DOCKET NUMBER: 2019-1658-PWS-E; IDENTIFIER: RN101184745; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2017 - June 30, 2017 and July 1, 2018 - December 31, 2018, monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect all required lead and copper tap samples for the January 1, 2017 - June

30, 2017 and July 1, 2017 - December 31, 2017, monitoring periods; PENALTY: $2,380; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: DIAMOND SHAMROCK REFINING COMPANY, L.P. dba Valero Three Rivers Refinery; DOCKET NUMBER: 2019-1427-WDW-E; IDENTIFIER: RN100542802; LOCATION: Three Rivers, Live Oak County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §305.125(1) and §331.63(h) and Underground Injection Control Permit Number WDW 404, Permit Provision V.C., Waste Stream Characteristics, by failing to maintain chemical and physical characteristics of the injected fluids within specified permit limits; and 30 TAC §305.125(1) and §331.64(d) and 40 Code of Federal Regulations §146.67(f), by failing to record injection tubing pressures, injection flow rates, injection volumes, and tubing-long string casing annulus pressure and volume at Waste Disposal Well 404; PENALTY: $6,751; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,700; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2019-1593-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 115.722(d), 116.715(a), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2), Flexible Permit Numbers 3452, PSDTX302M2, and PAL6, Special Conditions Numbers 1 and 9, Federal Operating Permit Number O1553, General Terms and Conditions and Special Terms and Conditions Numbers 1, 24, and 28.B, and Texas Health and Safety Code, §382.085(b), by failing to operate the flare with a flame present at all times and failing to prevent unauthorized emissions; PENALTY: $6,787; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,715; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: G. Kelly Brewer dba Evergreen Park Hickory Hills Water System; DOCKET NUMBER: 2019-1528-PWS-E; IDENTIFIER: RN102684909; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of the quarter for the second quarter of 2019; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $252; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Pedro Guity; DOCKET NUMBER: 2020-0257-WOC-E; IDENTIFIER: RN110909611; LOCATION: La Porte, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Gene Hayman; DOCKET NUMBER: 2020-0264-WOC-E; IDENTIFIER: RN110909637; LOCATION: La Porte, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Lake Fork Water Supply Corp.; DOCKET NUMBER: 2019-1677-PWS-E; IDENTIFIER: RN101453421; LOCATION: Yantis, Wood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: $1,605; ENFORCEMENT COORDINATOR: Jée Willis, (512) 239-1115; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Lindell Enterprises, Incorporated dba Lindell Chevron & Automotive; DOCKET NUMBER: 2020-0126-PST-E; IDENTIFIER: RN102990660; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(14) COMPANY: SAGERTON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-1632-PWS-E; IDENTIFIER: RN101218386; LOCATION: Sagerton, Haskell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running average; PENALTY: $465; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: Soren Strategies LLC, LEG Transport LLC, and House Hahl Commercial Owners Association, Incorporated; DOCKET NUMBER: 2019-1756-MWD-E; IDENTIFIER: RN106717028; LOCATION: Cypress, 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 WQ0015090001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: SPADE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2019-1475-PWS-E; IDENTIFIER: RN101458578; LOCATION: Spade, Lamb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the July 1, 2018 - December 31, 2018, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples for the July 1, 2017 - December 31, 2017, monitoring period; PENALTY: $127; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: Starrville Water Supply Corporation; DOCKET NUMBER: 2019-1631-PWS-E; IDENTIFIER: RN101450237; LOCATION: Winona, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligram per liter for total trihalomethanes based on the locational running annual average; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2019-1394-PWS-E; IDENTIFIER: RN101438331; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a storage tank capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(m), 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(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $2,726; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Victoria County Water Control and Improvement District Number 2; DOCKET NUMBER: 2020-0014-PWS-E; IDENTIFIER: RN101398303; LOCATION: Placedo, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallon per minute per connection; and 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 milligram per liter of free chlorine throughout the distribution system at all times; PENALTY: $3,208; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(20) COMPANY: Waller Independent School District; DOCKET NUMBER: 2019-1208-PWS-E; IDENTIFIER: RN105728596; LOCATION: Hockley, Waller County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude contamination or damage to the facility by trespassers; PENALTY: $200; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202001368

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 7, 2020

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Amended Notice of Hearing (To change hearing date) TEXAS REGIONAL LANDFILL COMPANY, LP: SOAH Docket No. 582-20-2569; TCEQ Docket No. 2019-1806-MSW; Proposed Permit No. 1841B

APPLICATION.

Texas Regional Landfill Company, LP, 3 Waterway Square Place, Suite 550, The Woodlands, Texas 77380 has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the expansion of the Travis County Landfill, a Type IV municipal solid waste (MSW) landfill in Travis County, Texas. The facility is located at 9600 FM 812, Austin, Travis County, Texas 78719. The TCEQ received this application on November 26, 2018. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: https://arcg.is/1bzbmH. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Elroy Library, 13512 FM 812, Del Valle, Travis County, Texas 78617. The permit application may be viewed online at: https://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_posted_apps.html.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on August 22, 2019, in English and Spanish. On December 20, 2019, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

10:00 a.m. - May 7, 2020

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 361, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 330; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. The mailing address for the TCEQ is P.O. Box 13087, Austin, Texas 78711-3087.

Further information may also be obtained from Texas Regional Landfill Company, LP at the address stated above or by calling Mr. Brett O'Connor at (832) 442-2920.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: April 2, 2020

TRD-202001383
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 8, 2020

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Enforcement Orders

An agreed order was adopted regarding City of Gladewater, Docket No. 2018-1678-PWS-E on April 7, 2020, assessing $1,275 in administrative penalties with $255 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Church in Peaster, Docket No. 2019-0194-PWS-E on April 7, 2020, assessing $663 in administrative penalties with $132 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GRESHAM USA LLC dba Liberty Crossing, Docket No. 2019-0259-PST-E on April 7, 2020, assessing $4,062 in administrative penalties with $812 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bellaire, Docket No. 2019-0268-PWS-E on April 7, 2020, assessing $472 in administrative penalties with $94 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 City of Ralls, Docket No. 2019-0302-MWD-E on April 7, 2020, assessing $3,937 in administrative penalties with $787 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEIGHBORLY, LLC, Docket No. 2019-0395-PST-E on April 7, 2020, assessing $5,434 in administrative penalties with $1,086 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 Keith Franklin McNeese, Docket No. 2019-0457-MSW-E on April 7, 2020, assessing $1,375 in administrative penalties with $275 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Elmo Water Supply Corporation, Docket No. 2019-0590-PWS-E on April 7, 2020, assessing $438 in administrative penalties with $87 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Gustine, Docket No. 2019-0625-MWD-E on April 7, 2020, assessing $5,325 in administrative penalties with $1,065 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Henson Tools, L.L.C., Docket No. 2019-0689-WQ-E on April 7, 2020, assessing $3,000 in administrative penalties with $600 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 KOTT LIVEOAKS INC., Docket No. 2019-0761-PWS-E on April 7, 2020, assessing $229 in administrative penalties with $183 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 City of Kerrville, Docket No. 2019-0773-MWD-E on April 7, 2020, assessing $6,375 in administrative penalties with $1,275 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 PIXLEY WATER WORKS, INC., Docket No. 2019-0796-PWS-E on April 7, 2020, assessing $280 in administrative penalties with $56 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 Cade Lakes Water Supply Corporation, Docket No. 2019-0825-PWS-E on April 7, 2020, assessing $165 in administrative penalties with $33 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Salado Operations, LLC, Docket No. 2019-0833-MLM-E on April 7, 2020, assessing $1,872 in administrative penalties with $374 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Halepaska Property Management, LLC dba Halepaska Country Lots, LLC, Docket No. 2019-0846-PWS-E on April 7, 2020, assessing $276 in administrative penalties with $55 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 TIDWELL WASTEWATER UTILITY, L.L.C., Docket No. 2019-0850-PWS-E on April 7, 2020, assessing $157 in administrative penalties with $31 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 EGERT DIRT WORKS LLC, Docket No. 2019-0933-WQ-E on April 7, 2020, assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RYAN BUSINESS, INC. dba Dessau Mini Mart, Docket No. 2019-0947-PST-E on April 7, 2020, assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WHITE HORSE CHRISTIAN ACADEMY, INC., Docket No. 2019-0987-PWS-E on April 7, 2020, assessing $434 in administrative penalties with $86 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 City of Mart, Docket No. 2019-1027-PWS-E on April 7, 2020, assessing $315 in administrative penalties with $63 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S. A. Thompson Marketing, Inc. dba Corner Store, Docket No. 2019-1041-PST-E on April 7, 2020, assessing $2,620 in administrative penalties with $524 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 Blake Truax dba The Barn and Merri Truax dba The Barn, Docket No. 2019-1054-PWS-E on April 7, 2020, assessing $465 in administrative penalties with $93 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 Robert S. Gutermuth, Docket No. 2019-1104-EAQ-E on April 7, 2020, assessing $1,875 in administrative penalties with $375 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 Cotton Center Water Supply Corporation, Docket No. 2019-1147-PWS-E on April 7, 2020, assessing $300 in administrative penalties with $60 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chris Harp Construction Limited Liability Company, Docket No. 2019-1155-AIR-E on April 7, 2020, assessing $2,500 in administrative penalties with $500 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 Nerro Supply, LLC dba Nerro Supply Investors, LLC, Docket No. 2019-1206-PWS-E on April 7, 2020, assessing $2,352 in administrative penalties with $470 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Memorial Health System of East Texas, Docket No. 2019-1269-PST-E on April 7, 2020, assessing $2,438 in administrative penalties with $487 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 TX Energy Services, LLC, Docket No. 2019-1278-PWS-E on April 7, 2020, assessing $165 in administrative penalties with $33 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW CORNER BUSINESS LLC dba MS Quick Mart, Docket No. 2019-1285-PST-E on April 7, 2020, assessing $3,403 in administrative penalties with $680 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 Caverns of Sonora, Inc., Docket No. 2019-1301-PWS-E on April 7, 2020, assessing $150 in administrative penalties with $30 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EnCana Oil & Gas (USA) Inc., Docket No. 2019-1302-AIR-E on April 7, 2020, assessing $2,374 in administrative penalties with $474 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 TRINITY RCT, L.P., Docket No. 2019-1467-PWS-E on April 7, 2020, assessing $1,621 in administrative penalties with $324 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 Texas Regional Bank, Docket No. 2019-1482-EAQ-E on April 7, 2020, assessing $938 in administrative penalties with $187 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Paso Del Norte Materials, LLC, Docket No. 2019-1688-AIR-E on April 7, 2020, assessing $1,725 in administrative penalties with $345 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 Paso Del Norte Materials, LLC, Docket No. 2019-1689-AIR-E on April 7, 2020, assessing $1,312 in administrative penalties with $262 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 Paso Del Norte Materials, LLC, Docket No. 2019-1699-AIR-E on April 7, 2020, assessing $1,312 in administrative penalties with $262 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.

TRD-202001386
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 8, 2020

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Enforcement Orders

A default order was adopted regarding Audelia Herrera and Salomon Vasquez dba Salomon Vasquez & Sons and dba Tony's Construction Garbage Cleanup and Demolition Work, Docket No. 2018-0712-MSW-E on April 8, 2020 assessing $2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, 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 Emmanuel Mendoza dba Mendoza Body Shop, Docket No. 2018-1200-AIR-E on April 8, 2020 assessing $2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Buckeye Texas Processing LLC, Docket No. 2018-1310-AIR-E on April 8, 2020 assessing $759,521 in administrative penalties with $151,904 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 OXY USA WTP LP, Docket No. 2018-1326-AIR-E on April 8, 2020 assessing $8,785 in administrative penalties with $1,757 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 Wyman-Gordon Forgings, Inc., Docket No. 2018-1434-IWD-E on April 8, 2020 assessing $39,637 in administrative penalties with $7,927 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.

A default order was adopted regarding William Dennis Cowart, Docket No. 2018-1505-MSW-E on April 8, 2020 assessing $1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 MURPHY OIL USA, INC. dba Murphy USA 5694 and Murphy USA 7378, Docket No. 2018-1667-PST-E on April 8, 2020 assessing $17,626 in administrative penalties with $3,524 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding A-2 Convenience LLC dba Super Stop 181, Docket No. 2019-0030-PST-E on April 8, 2020 assessing $18,142 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding M J H Star Enterprises, Inc. dba Airline Food Mart, Docket No. 2019-0258-PST-E on April 8, 2020 assessing $4,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PERVEN, LLC dba Stop N Drive 2, Docket No. 2019-0308-PST-E on April 8, 2020 assessing $9,141 in administrative penalties with $1,828 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 City of Crockett, Docket No. 2019-0506-MWD-E on April 8, 2020 assessing $11,250 in administrative penalties with $2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Trenton, Docket No. 2019-0524-PWS-E on April 8, 2020 assessing $367 in administrative penalties. 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 Grand Harbor Water Supply Corporation, Docket No. 2019-0526-PWS-E on April 8, 2020 assessing $774 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 S & S B ENTERPRISES INC. dba Zara Food Mart, Docket No. 2019-0544-PST-E on April 8, 2020 assessing $45,000 in administrative penalties with $34,950 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 City of Spearman, Docket No. 2019-0571-MWD-E on April 8, 2020 assessing $16,537 in administrative penalties with $3,307 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 City of Toyah, Docket No. 2019-0591-PWS-E on April 8, 2020 assessing $895 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 KWIK CHEK FOOD STORES, INC. dba Kwik Chek 37, Docket No. 2019-0631-PST-E on April 8, 2020 assessing $48,878 in administrative penalties with $9,775 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 City of Denton, Docket No. 2019-0654-MWD-E on April 8, 2020 assessing $13,500 in administrative penalties. 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 Aqua Texas, Inc., Docket No. 2019-0738-MWD-E on April 8, 2020 assessing $15,187 in administrative penalties with $3,037 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midkiff Holdings, LLC, Docket No. 2019-0778-WQ-E on April 8, 2020 assessing $5,625 in administrative penalties. 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 Horizon Regional Municipal Utility District, Docket No. 2019-0785-MWD-E on April 8, 2020 assessing $18,600 in administrative penalties with $3,720 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 Daisy Farms, LLC, Docket No. 2019-0832-AGR-E on April 8, 2020 assessing $7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Herbert 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 City of Paris, Docket No. 2019-0876-MWD-E on April 8, 2020 assessing $19,050 in administrative penalties with $3,810 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 DOBBIN-PLANTERSVILLE WATER SUPPLY CORPORATION, (A Non-Profit Corporation), Docket No. 2019-0971-PWS-E on April 8, 2020 assessing $345 in administrative penalties. 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 White Oak Bayou Joint Powers Board, Docket No. 2019-0981-MWD-E on April 8, 2020 assessing $15,750 in administrative penalties with $3,150 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 Republic Metal Roofing LLC, Docket No. 2019-1185-EAQ-E on April 8, 2020 assessing $13,750 in administrative penalties with $2,750 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001393
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 8, 2020

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40310

Application. Nucore Environmental Services, LLC, P.O. Box 5357, Pasadena, Texas 77508 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40310, to construct and operate a medical waste processing facility. The proposed facility, Nucore Environmental Services, LLC, will be located at 6410 Long Drive, Houston, Texas 77087, in Harris County. The Applicant is requesting authorization to receive, store, and process medical waste, non-hazardous pharmaceuticals, and confidential documents; and store and transfer trace chemotherapeutic waste and pathological waste; that includes hospitals, clinics, nursing homes, and other health care related facilities. The registration application is available for viewing and copying at the Houston Public Library, 6767 Bellfort Street, Houston, Texas 77087 and may be viewed online at https://www.lnvinc.com/wp-content/uploads/2020/03/NUCORE_Registration-Application-Submittal_February-28-2020.pdf. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.arcgis.com/apps/webappviewer/index.html?find=6410%20Long%20Dr%2C%20Houston%2C%20TX%2C%2077087%2C%20USA. For exact location, refer to application.

The TCEQ executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, <www.tceq.texas.gov/goto/pep>. General information regarding the TCEQ can be found on our website at <www.tceq.texas.gov/>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Nucore Environmental Services, LLC at the address stated above or by calling Mr. Robert Gonzalez at (713) 557-5086.

TRD-202001382

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 8, 2020

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Notice of District Petition

Notice issued April 6, 2020

TCEQ Internal Control No. D-09232019-025; Lumpkin Family Partnership, Ltd. (Petitioner) filed a petition for creation of Collin County Municipal Utility District No. 5 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 515 acres located within Collin County, Texas; and (3) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Rockwall, Texas (City), and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. Additionally, application material indicates there are no lienholders on the property to be included in the proposed District. In accordance with Local Government Code §42.042 and TWC §54.016, the Petitioner submitted a petition to the City of Rockwall, requesting the City's consent to the creation of the District, followed by a petition for the City to provide water and sewer services to the District. The petition further states that the proposed District will: (1) construct, maintain, and operate a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; (2) construct, maintain, and operate a sanitary sewer collection, treatment, and disposal system, for domestic, and commercial purposes; (3) construct, install, maintain, purchase, and operate drainage and roadway facilities and improvements; and (4) construct, install, maintain, purchase, and operate facilities, systems, plants, and enterprises of such additional facilities as shall be consonant with the purposes for which the proposed District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $40,000,000 ($30,398,000 utilities plus $9,602,000 roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information

section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at https://www.tceq.texas.gov.

TRD-202001381
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 8, 2020

♦ ♦ ♦

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 18, 2020.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 18, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Kenneth Marriott; DOCKET NUMBER: 2018-1505-MSW-E; TCEQ ID NUMBER: RN109966317; LOCATION: 500 feet southeast of County Road 213 (Old Highway 69) and County Road 213B (Danny Reed Road) near Huntington, Angelina County ; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202001371
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 7, 2020

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Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 18, 2020.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 18, 2020.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number;

however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: A A & R Business Investments Inc dba Quick Step N Save; DOCKET NUMBER: 2019-0064-PST-E; TCEQ ID NUMBER: RN102031192; LOCATION: 132 East Park Row Drive, Arlington, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $4,800; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202001369
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 7, 2020

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 18, 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 the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 18, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Dale W. Haggard dba Spring Valley Subdivision; DOCKET NUMBER: 2019-0886-PWS-E; TCEQ ID NUMBER: RN101229185; LOCATION: off of County Road 4789 near Atlanta, Cass County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e) and §290.107(e), by failing to report the results of nitrate and Volatile Organic Compound contaminated sampling to the executive director (ED); 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and a certification that the CCR has been distributed and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Report for the second and third quarters of 2016; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or associated late fees for TCEQ Financial Administration Account Number 90340026; and TWC, §5.702 and 30 TAC §291.76, by failing to fully pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12723; PENALTY: $350; STAFF ATTORNEY: Jaime Garcia, Litigation Division, MC 175, (512) 239-5807; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: DETMAR LOGISTICS, LLC and IMPERIAL FLEET SERVICE INC; DOCKET NUMBER: 2019-0806-MLM-E; TCEQ ID NUMBER: RN107009854; LOCATION: 1182 Gas Plant Road, San Angelo, Tom Green County; TYPE OF FACILITY: oilfield trucking services fleet maintenance facility; RULES VIOLATED: 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications. Specifically, a hazardous waste determination and waste classification was not conducted for the vehicle wash rinsate waste stream; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste (MSW). Specifically, MSW consisting of 110 barrels (approximately 17.2 cubic yards) of vehicle wash rinsate was disposed of at an unauthorized facility on March 21, 2019; PENALTY: $5,266; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Town of Addison; DOCKET NUMBER: 2015-0549-WR-E; TCEQ ID NUMBER: RN105975361; LOCATION: Ponte Avenue along Vitruvian Trail, Addison, Dallas County; TYPE OF FACILITY: two permitted impoundments, associated with TCEQ Water Use Permit Number 5383A (the "Permit"), within a municipal development; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to beginning construction of any work designed for the storage, taking, or diversion of state water; 30 TAC §297.45(e) and the Permit, Special Condition 6.B., by failing to maintain a Trinity Aquifer groundwater well as an alternate source of water; TWC, §11.121, 30 TAC §297.45(e), and the Permit, Special Condition 6.B., by failing to supplement the reservoirs with water from the groundwater well in the amount of a minimum of 5.82 acre-feet of water per year; and 30 TAC §297.45(e) and the Permit, Special Condition 6.D., by failing to maintain a riparian buffer zone of permanent native vegetation around the perimeter of the reservoir complex at a density to ensure that the slope of the perimeter is not greater than 15%; PENALTY: $34,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202001370

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 7, 2020

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Notice of Public Hearing and Comment Period on Proposed Draft Oil and Gas Operating Permit Numbers 511, 512, 513, and 514

The Texas Commission on Environmental Quality (TCEQ, commission) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft Oil and Gas General Operating Permit (GOP) Numbers 511, 512, 513, and 514. The draft GOPs contain revisions based on recent federal and state rule changes, which include updates to the requirements tables; the addition of new requirements tables; and updates to the terms. This renewal also corrects typographical errors and updates language for administrative preferences.

The draft GOPs are subject to a 30-day comment period starting April 24, 2020. During the comment period, any person may submit written comments on the draft GOPs. The commission will hold a public hearing in Austin on May 26, 2020, at 10:00 a.m. in Building E, Room 201S, TCEQ offices, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the draft GOPs 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Please periodically check *https://www.tceq.texas.gov/permitting/air/nav/titlev_news.html* before the public hearing date for updated information regarding: accommodations in the event the meeting must be conducted remotely due to COVID-19 restrictions; delay of hearing; or cancellation of the hearing.

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 Non-Rule Project Number 2019-126-OTH-NR. Written comments may be submitted to Ms. Sherry Davis, Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087. The comment period closes May 27, 2020. Copies of the draft GOPs may be obtained from the commission website at *https://www.tceq.texas.gov/permitting/air/nav/titlev_news.html*. For further information, please contact Ms. Davis, at (512) 239-2141. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202001374
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 7, 2020

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Texas Health and Human Services Commission

Amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) Waiver

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. CMS has approved this waiver through September 30, 2022.

Currently, children in Department of Family and Protective Services (DFPS) conservatorship who have Supplemental Security Income (SSI) and who become eligible for Adoption Assistance (AA) or Permanency Care Assistance (PCA) are eligible to receive Medicaid benefits. However, these children may lose their SSI, because the adoptive or permanency care placement family does not meet SSI financial requirements. This loss of SSI results in the child enrolling into the STAR Medicaid managed care program, a program they otherwise would not have been eligible for. This amendment proposes to address this issue.

The amendment is in response to House Bill 72 (86th Regular Session), codified in Government Code section 533.00531, concerning Medicaid benefits for children formerly in foster care, which requires the following:

--Allow children receiving Supplemental Security Income (SSI) or who were receiving Supplemental Security Income before becoming eligible for AA or PCA to continue to receive assistance or services under STAR Health or STAR Kids.

--HHSC must protect the continuity of care for each child in AA or PCA who have or had SSI and ensure coordination between the STAR Health program and any other Medicaid managed care program for each child who is transitioning between Medicaid managed care programs.

Effective September 1, 2020, the waiver amendment proposed by HHSC will allow children in AA and PCA Medicaid who are in a 1915(c) waiver, have SSI, and children who lose their SSI, to have the choice of staying in STAR Health or moving to STAR Kids when they leave conservatorship, instead of being required to go to STAR Kids or STAR.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment by contacting Camille Weizenbaum by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

Attention: Camille Weizenbaum, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

TRD-202001388

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 8, 2020

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Notice of Public Hearing for Proposed Interim Reimbursement Rates for Small and Large State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 21, 2020, at 10:00 a.m., to receive public comment for interim Medicaid reimbursement rates for small and large state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).

Due to the declared state of disaster stemming from COVID-19, this hearing will now be conducted online only. No physical entry to the hearing will be permitted. Please join the meeting from your computer, tablet or smartphone at *https://attendee.gotowebinar.com/register/7024218345222092044.* After registering, you will receive a confirmation email containing information about joining the webinar. You can also dial in using your phone at (213) 929-4232, access code 489-812-832.

If you are new to GoToWebinar, please download the GoToMeeting app at *https://global.gotomeeting.com/install/626873213* before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursement rates.

Proposal. HHSC proposes the following amended interim per diem reimbursement rates for small and large state-operated ICFs/IID to be effective retroactive to September 1, 2019:

Small State-Operated ICFs/IID

Proposed interim daily rate: $650.77

Large State-Operated ICFs/IID - Medicaid Only clients

Proposed interim daily rate: $903.45

Large State-Operated ICFs/IID - Dual-eligible Medicaid/Medicare clients

Proposed interim daily rate: $864.11

HHSC is proposing these interim rates so that the facilities will have adequate funds to serve the individuals residing in these facilities. The proposed interim rates account for actual and projected increases in costs to operate these facilities.

Methodology and Justification. The proposed payment rates were determined in accordance with Title 1 of the Texas Administrative Code §355.456, which addresses the reimbursement methodology for ICFs/IID.

Briefing Package. A briefing package describing the proposed amended payment rates will be available at *http://rad.hhs.texas.gov/rate-packets/* on or after April 10, 2020. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by e-mail at *RAD-LTSS@hhsc.state.tx.us.*

Written Comments. Written comments regarding the proposed amended payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to *LTSS@hhsc.state.tx.us.* In addition, written comments may be sent by overnight mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316. However, due to the current state emergency declaration, HHSC is encouraging comments be sent via e-mail, if feasible.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-202001366
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 6, 2020

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Department of State Health Services

Texas Asbestos Health Protection Rules Penalty Matrix

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the Penalty Matrix is not included in the print version of the Texas Register. The figure is available in the on-line version of the April 17, 2020, issue of the Texas Register.)

The Texas Asbestos Health Protection Act (TAHPA), Chapter 1954 of the Texas Occupations Code, authorizes the Department of State Health Services (department) to regulate demolition and renovation activities to protect the public from asbestos emissions and to license persons engaged in activities including the removal, encapsulation, or enclosure of asbestos in public buildings. The regulatory goals are to establish the means of control and minimization of public exposure to airborne asbestos fibers in Texas. To achieve these goals, the department performs routine inspections, investigates complaints and engages in other regulatory activities.

The TAHPA authorizes the Executive Commissioner of the Texas Health and Human Services Commission to adopt and the department to enforce rules to implement TAHPA, including the authority to adopt rules regarding demolition and renovation activities to protect the public from asbestos emissions. The Texas Asbestos Health Protection Rules (TAHPR) are found in Title 25 of the Texas Administrative Code, Chapter 295, Subchapter C. Under Section 295.33(a) of the TAHPR, the department has adopted by reference the National Emission Standard for Asbestos (NESHAP), found in 40 CFR Part 61, Subpart M, and 40 CFR Part 763, Subpart E, and Appendices A, C, and D. Additionally, the department has the authority under §1954.351 of the TAHPA to impose administrative penalties on persons who violate the TAHPA and the TAHPR.

The department publishes the Asbestos Penalty Matrix (matrix) to inform the public and the regulated asbestos industry about the department's enforcement policies. The penalties set forth in the matrix are created to promote compliance with the TAHPA and department rules, promote public confidence in the asbestos industry, and deter conduct detrimental to the health and safety of the public by ensuring consistent, uniform, and fair assessment of penalties by the department for violations of the TAHPR. The matrix promotes transparency in the de-

partment's regulatory efforts to protect the public from asbestos emissions and provides notice of these regulatory standards to the public and the regulated asbestos industry. The list of violations in the matrix provides a corresponding citation to the appropriate section of the asbestos rules or the NESHAP, if applicable, for each violation.

The actual penalty to be assessed in a particular enforcement case remains within the discretion of the department. Under Section 1954.352(b) of the TAHPA, the department shall consider the following when determining the amount of a penalty: (1) the seriousness of the violation, (2) any hazard to the health and safety of the public, (3) the person's history of previous violations, and (4) any other matter that justice may require.

Section 295.70(f) of the TAHPR provides for three violation severity levels: Critical - Level I, Serious - Level II, and Significant - Level III. Critical - Level I violations are violations that are most significant and have a direct negative impact on public health and safety. Serious - Level II violations are those that are significant and which, if not corrected, could threaten public health and safety. Significant - Level III violations are those that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances. These three violation severity levels are reflected accordingly in the matrix.

Within each severity level, a violation may be determined to be minor, moderate, or major depending on the threat to public health. In determining whether a violation is minor, moderate, or major, the department will consider factors which increase the risk to the public from exposure to asbestos fibers such as: damage or disturbance to asbestos containing building materials, the condition and quantity of the asbestos, the method of abatement, the occupancy of the building, and the likelihood of a repeat violation.

The department may offer to settle disputed claims as deemed appropriate, through various means including, but not limited to, Informal Conference, reduced penalty amounts, license sanctions, or other appropriate lawful means, subject to approval of the Commissioner of the department, on a case-by-case basis. In addition to administrative penalties, the department may propose license suspension or revocation for egregious or multiple instances of Severity Level I Critical violations and Severity Level II Serious violations. All decisions made by the department related to violations of the TAHPR are based on current circumstances, including extant information and laws.

The proposed matrix may be reviewed and revised from time to time. This matrix shall be effective immediately upon publication in the *Texas Register* and shall supersede the current department procedures for assessing administrative penalties for violations of the TAHPR.

Figure

TRD-202001367
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: April 6, 2020

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Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft National Housing Trust Fund Minimum Rehabilitation Standards for the 2020-2024 State of Texas Consolidated Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold one public hearing during a 33-day Public Comment period to accept public comment on the draft Multifamily National Housing Trust Fund (NHTF) Minimum Rehabilitation Standards (NHTF Rehabilitation Standards or the Standards) for the 2020-2024 State of Texas Consolidated Plan (Consolidated Plan or the Plan). The Public Comment period for the draft NHTF Rehabilitation Standards will be held Thursday, April 23 - Tuesday, May 26, 2020. TDHCA will provide updates via listserv and on our website for any potential additions to the hearing schedule, including the use of a Virtual Public Hearing via webinar due to the ongoing public health concern related to COVID-19.

The one public hearing for the draft NHTF Rehabilitation Standards is scheduled to take place as follows:

Thursday, April 23, 2020, 9:00 a.m.

Via GoToWebinar

https://attendee.gotowebinar.com/register/862841056476346637

Dial-in number: +1 (562) 247-8422, access code 370-639-005

(Persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments.)

TDHCA, Texas Department of Agriculture (TDA), and Texas Department of State Health Services (DSHS) prepared the draft 2020-2024 State of Texas Consolidated Plan in accordance with 24 CFR §91 Subpart D. TDHCA coordinates the preparation of the Consolidated Plan documents. The Consolidated Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, and the Emergency Solutions Grants (ESG) Program, the HOME Investment Partnerships (HOME) Program, and the National Housing Trust Fund (NHTF) by TDHCA. In addition, the Consolidated Plan states the intended uses of funds from HUD for the 2020 Program Year. The Program Year begins on September 1, 2020, and ends on August 31, 2021, and then repeats for each year of the Plan thereafter.

The draft 2020 National Housing Trust Fund Minimum Rehabilitation Standards (the NHTF Rehabilitation Standards) only apply to the National Housing Trust Fund (NHTF) HUD-funded program administered by TDHCA. Currently, the NHTF program is statutorily required to serve extremely low-income (ELI) families and households. Thus far, TDHCA has only awarded NHTF funds for only those eligible new construction and reconstruction activities serving ELI populations in Texas.

Staff prepared the NHTF Rehabilitation Standards to expand the scope of eligible NHTF activities to include those eligible multifamily rehabilitation activities contemplated under 24 CFR §93 and the 2020 State Administrative Rules. The NHTF Minimum Rehabilitation Standards would provide the **minimum** threshold requirements for use of the federal NHTF funds with eligible Rehabilitation activities in Texas.

The draft Plan and draft NHTF Rehabilitation Standards may be accessed from TDHCA's Public Comment Web page at: http://www.tdhca.state.tx.us/public-comment.htm.

The 33-day public comment period for the Plan will be open from Thursday, April 23, 2020, through Tuesday, May 26, 2020. Anyone may submit comments on the Standards in written form or oral testimony at the public hearing. In addition, written comments concerning the Standards may be submitted by email to alena.morgan@tdhca.state.tx.us or mail to the Texas Department of Housing and Community Affairs, Multifamily Finance Division, P.O. Box 13941, Austin, Texas 78711-3941, anytime during the comment period. Comments must be received no later than Tuesday, May 26, 2020, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Elizabeth Yevich, at (512) 475-3959 or Relay Texas at (800) 735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearings should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202001389
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 8, 2020

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Provider Partners Health Plan, Inc., a foreign health maintenance organization (HMO). The home office is in Linthicum Heights, Maryland.

Application for United Dental Care of Texas, a domestic health maintenance organization (HMO), DBA (doing business as) Sun Life. The home office is in Plano, Texas.

Application for United Dental Care of Texas, a domestic health maintenance organization (HMO), DBA (doing business as) Sun Life Financial. The home office is in Plano, Texas.

Application to do business in the state of Texas for Cypress Property & Casualty Insurance Company, a foreign fire and/or casualty company. The home office is in Jacksonville, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202001387
James Person
General Counsel
Texas Department of Insurance
Filed: April 8, 2020

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Disposition of Real Estate - Blanco County

Approximately 3.5 Acres at Blanco State Park

In a meeting on May 21, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the sale of approximately 3.5 acres near Blanco State Park. The narrow riverbank tract is isolated from and not adjacent to the park. The sale tract will be subject to prohibitions on subdivision, development, and native vegetation removal. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Grant of Easement - Lubbock County

Approximately 0.10 Acres at the Texas Parks and Wildlife Department Law Enforcement Office

In a meeting on May 21, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing a utility easement of approximately 0.10-acres at the Texas Parks and Wildlife Department Law Enforcement Office in Lubbock, Texas. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Grant of Pipeline Easements - Brazoria County

Approximately 30 Acres at the Justin Hurst Wildlife Management Area

In a meeting on May 21, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing two pipeline easements totaling approximately 30 acres at the Justin Hurst Wildlife Management Area in Brazoria County, Texas. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

TRD-202001385
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Filed: April 8, 2020

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application to Amend a Certificate of Convenience and Necessity for a Minor Boundary Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 17, 2020, to amend a certificate of convenience and necessity for a minor service boundary change.

Docket Style and Number: Application of Peoples Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for

a Minor Boundary Service Change in the Golden Exchange, Docket Number 50673.

The Application: Peoples Telephone Cooperative, Inc. filed an application for a minor boundary change to amend the boundary of the Golden exchange. Peoples seeks the revision to serve a small area contiguous to its currently certificated service area. The Golden Exchange borders Southwestern Bell Telephone Company dba AT&T Texas's Mineola Exchange.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by electronic mail at puc.texas.gov, by phone at (512) 936-7120, or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is May 20, 2020. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50673.

TRD-202001373
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2020

♦ ♦ ♦

Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on April 3, 2020, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Big Bend Telephone Company, Inc. to Recover Funds from the Texas Universal Service Fund Under PURA §56.025 and 16 TAC §26.406, Docket Number 50735.

The Application: Big Bend Telephone Company, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Big Bend Telephone Company for calendar year 2017. Big Bend requests that the Commission allow recovery of funds from the TUSF in the amount of $1,238,502 for calendar year 2017 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50735.

TRD-202001391
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2020

♦ ♦ ♦

Regional Water Planning Group - Area B

Notice of Public Hearing Teleconference on the 2021 Region B Initially Prepared Plan (Revised)

The original Notice of Public Hearing was published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2266).

Due to recent developments associated with the COVID-19 pandemic and in compliance with state and local regulations, the Regional Water Planning Group - Area B has changed the format of their public hearing as follows:

Notice is hereby given that the Regional Water Planning Group - Area B (RWPG-B) will hold a **public hearing teleconference** to receive verbal comments regarding the adopted *2021 Region B Initially Prepared Plan (IPP).* The Region B area includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the part of Young County that encompasses the City of Olney. Comments submitted to the RWPG-B will be utilized in the development of the final *2021 Region B Regional Water Plan.*

The **Public Hearing Teleconference** can be accessed:

Wednesday, April 22, 2020 at 6:00 p.m.

Phone Number (800) 717-4201

Conference ID Number 5425448#

The RWPG-B will accept written comments through 5:00 p.m. on June 22, 2020, and will accept verbal comments addressing the *IPP* during the **Public Hearing Teleconference.** Pre-registration and instructions for submitting verbal comments during the **teleconference** can be obtained by contacting Stacey Green at (940) 723-2236 or stacey.green@rra.texas.gov. Written comments, questions or requests for additional information should be directed to:

Mr. Russell Schreiber, P.E., RWPG-B Chair

c/o Red River Authority of Texas

P.O. Box 240

Wichita Falls, Texas 76307

(940) 723-2236

rwpg-b@rra.texas.gov

A copy of the *IPP* is available for viewing at the RWPG-B Administrative Agency, Red River Authority of Texas, 3000 Hammon Road, Wichita Falls, and on the RWPG-B website at www.regionbwater.org. A printed or electronic copy of the *IPP* will be available for viewing at the County Clerk's Office in each county located within the Region B water planning area. A printed or electronic copy of the *IPP* will also be available for viewing at the following libraries: Archer Public Library, Baylor County Free Library, Edwards Public Library, Bicentennial City-County Library, Foard County Library, Thompson Sawyer Library, King County Library, Bowie Public Library, Nocona Library, Wichita Falls Public Library, Carnegie City-County Library, and the Olney Community Library.

TRD-202001384
Russell Schreiber, P.E.
Region B Chair
Regional Water Planning Group - Area B
Filed: April 8, 2020

♦ ♦ ♦

Department of Savings and Mortgage Lending

Correction of Error

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopted amendments to 7 TAC §80.201 and §81.201 in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6524 and 6527 respectively). The figure for Form B in 7 TAC §80.201(b) and the figure for

Form B in 7 TAC §81.201(b) was submitted by the department with incorrect text. The correct version of Form B §80.201(b) is as follows.

Figure: 7 TAC §80.201(b)

Figure: 7 TAC §80.201(b)

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Company:

NMLS ID #:

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? _____Yes _____No

Mortgage company has:

Reviewed prospective applicant's / applicant's credit report and credit score ____Yes ____No ____Not applicable

Verified prospective applicant's / applicant's income ____Yes _____No ____Not applicable

Verified prospective applicant's / applicant's available cash to close ____Yes _____No ____Not applicable

Reviewed prospective applicant's / applicant's debts and other assets ____Yes _____No ____Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than $_____

2. The lender receives an acceptable title commitment

3. The subject property's survey shows no encroachments

Figure: 7 TAC §80.201(b)

4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes the loan documents lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

_____

Residential Mortgage Loan Originator Name

NMLS ID #

The correct version of Form B §81.201(b) is as follows. Figure: 7 TAC §81.201(b)

Figure: 7 TAC §81.201(b)

Form B

Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? _____Yes _____No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: _____Yes ___No ____Not applicable

Verified prospective applicant's / applicant's income : _____Yes _____No ____Not applicable

Verified prospective applicant's / applicant's available cash to close: _____Yes _____No ____Not applicable

Reviewed prospective applicant's / applicant's debts and other assets: _____Yes _____No ____Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than $_____

2. The lender receives an acceptable title commitment

3. The subject property's survey shows no encroachments

Figure: 7 TAC §81.201(b)

4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes the loan documents the lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

_____

Residential Mortgage Loan Originator Name

NMLS ID #

TRD-202001329 ♦ ♦ ♦

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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